

## SENATE.

THURSDAY, February 13, 1913.

(Legislative day of Tuesday, February 11, 1913.)

The Senate reassembled at 12 o'clock meridian on the expiration of the recess.

Mr. GALLINGER. Mr. President, I would suggest the absence of a quorum.

The PRESIDENT pro tempore (Mr. BACON). The Senator from New Hampshire suggests the absence of a quorum. The Secretary will proceed to call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Clark, Wyo.	Kenyon	Root
Bacon	Crane	La Follette	Sheppard
Bankhead	Crawford	Lodge	Simmons
Borah	Cullom	McLean	Smith, Mich.
Bourne	Cummins	Martin, Va.	Smoot
Bradley	Curtis	Martine, N. J.	Stephenson
Brady	Dillingham	Myers	Sutherland
Brandegee	Dixon	Nelson	Swanson
Bristow	du Pont	Newlands	Thornton
Brown	Foster	Overman	Tillman
Bryan	Gallinger	Owen	Townsend
Burnham	Gamble	Page	Warren
Burton	Gronna	Percy	Webb
Catron	Jackson	Perkins	Wetmore
Chamberlain	Johnston, Ala.	Pomerene	Williams
Clapp	Jones	Richardson	Works

Mr. ASHURST. I was requested to announce that the junior Senator from New York [Mr. O'GORMAN] is absent attending to business of the Senate.

The PRESIDENT pro tempore. Upon the call of the roll of the Senate 64 Senators have responded to their names, and a quorum of the Senate is present. Senate bill 8033 is pending.

## CONNECTICUT RIVER DAM.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

Mr. ROOT. Mr. President, there has been a good deal of discussion about this bill which has proceeded upon an impression as to the effect of the legislation proposed as a precedent; and as almost always happens in a discussion of that character the true nature of the bill before the Senate has been somewhat lost sight of, and many questions have been discussed which do not really arise upon this measure.

Let me try to state what I understand to be the true nature of the proposed law which the committee has reported. It proposes to give the assent of the United States to the Connecticut River Co., a corporation organized and doing business under the laws of the State of Connecticut, to relocate its Enfield Dam, so called, and to construct, maintain, and operate such relocated dam, as described in the act, with a proviso that the work shall be in accordance with the general dam act of 1906, as amended by the act of June 23, 1910; and it imposes as a condition of the giving of consent by Congress a provision that a reasonable charge upon the proceeds realized from the sale of water power which will be developed by the construction of the dam shall be paid over to the United States, to be applied in improving the navigation of the Connecticut River and the waters connected therewith.

There is no question involved here of title of property, of franchise, of conveyance whatever. The Connecticut River Co., which is proposing to construct this dam, owns all the property which it requires. It is the riparian proprietor. It does not ask from the United States a grant of property. The Connecticut River Co. has a franchise from the State of Connecticut, which gives it corporate capacity to erect the proposed dam upon and through the use of the property that it owns, and which gives it the right of eminent domain through which it may acquire any further property that may be needed. It does not ask the United States to confer upon it any franchise of any description whatever.

The only thing that the proposed statute undertakes to do is to give the consent of the United States, as the protector, the guardian, the promoter of navigation upon the navigable streams of the United States, to the erection of this dam upon the property of this corporation under the authority of the State of Connecticut.

Mr. WORKS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from California?

Mr. WORKS. May I ask the Senator from New York a question?

Mr. ROOT. Certainly.

Mr. WORKS. Assuming what the Senator has said with respect to the franchise owned by the Connecticut River Co. and its ownership of the property as a riparian owner, would not the company have the right to divert the waters of the stream for its use so long as that diversion did not interfere with the navigable quality of the stream?

Mr. ROOT. It depends upon the action of the United States. If the United States chose to give its consent, it would.

Mr. WORKS. Has the United States any power to withhold its consent, so far as the mere matter of the diversion of the stream for beneficial purposes is concerned, except to preserve the navigable quality of the stream?

Mr. ROOT. It has.

Mr. BORAH. Mr. President—

Mr. ROOT. I yield to the Senator from Idaho, and when he has asked his question and I have answered it, if I am able to, I will ask to be allowed to proceed with what I have perhaps mistakenly considered to be an argument.

Mr. BORAH. I do not think the Senator will make any mistake about that; he never does. I was going to say that that raises the particular question about which we of the West are so greatly concerned, and if I do not interrupt the Senator's able argument I should like before he concludes that he would state for our benefit what right the National Government has in a stream except to protect navigation.

Mr. ROOT. I will try to do so, Mr. President.

Mr. WORKS. Mr. President—

Mr. ROOT. I was relieved when the Senator from Idaho finished his sentence regarding the raising of particular questions, for it would seem to me that this bill has raised not only particular questions, but particular disturbances.

The PRESIDENT pro tempore. Does the Senator from New York yield further to the Senator from California?

Mr. McLEAN. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Connecticut suggests the absence of a quorum. The Secretary will proceed to call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cummins	Kenyon	Smith, Ariz.
Bacon	Curtis	Kern	Smith, Ga.
Bankhead	Dillingham	La Follette	Smoot
Borah	Dixon	McCumber	Stephenson
Bradley	du Pont	McLean	Sutherland
Brady	Fletcher	Martine, N. J.	Swanson
Brandegee	Foster	Myers	Thornton
Bristow	Gallinger	Newlands	Tillman
Bryan	Gamble	Overman	Townsend
Catron	Gardner	Owen	Warren
Chamberlain	Gore	Page	Webb
Clarke, Ark.	Gronna	Perkins	Wetmore
Crane	Guggenheim	Pomerene	Williams
Crawford	Jackson	Root	Works
Cullom	Jones	Sheppard	

Mr. ASHURST. I wish to announce that the junior Senator from New York [Mr. O'GORMAN] is absent on business of the Senate.

The PRESIDENT pro tempore. On the call of the roll of the Senate 59 Senators have answered to their names. A quorum is present. The Senator from New York will proceed.

Mr. ROOT. I yield to the Senator from California, who was about to ask a question.

Mr. WORKS. Mr. President, I am sorry to interrupt the Senator from New York after the statement made by him that he does not desire to be interrupted, but I asked him because the question presents the crux of this whole matter so far as I am individually concerned. I am morally certain that the answer of the Senator from New York is absolutely wrong, and I am equally certain that the Government, in dealing with this question, is acting upon precisely that wrong theory of the law relating to this subject.

Mr. ROOT. Mr. President, if I were less certain myself I should be shaken in my position by the expression of the Senator from California, for whose judgment I have very high regard. I wonder if the Senator from California realizes just what his question was; I wonder if the Senator from Idaho [Mr. BORAH] realizes just what his question was. Perhaps I have mistaken them, but I understood—

Mr. BORAH. Mr. President—

Mr. ROOT. I understood their questions to be whether the United States had any interest or right except to protect navigation or to preserve navigation—one of those words was used, I think one by one Senator and the other by the other—"to preserve or to protect navigation."

Mr. WORKS. Evidently the Senator from New York has wholly misapprehended my question.

Mr. ROOT. I may have misapprehended the question the Senator from California meant to ask, but I think I accurately recall the question he actually asked.

Mr. WORKS. I think the Senator from New York is equally mistaken in that respect. My question was whether the Government of the United States had the right to prevent a riparian owner upon a stream from diverting water for beneficial uses so long as that diversion did not in any way interfere with the navigable quality of the stream?

Mr. ROOT. Yes. I have answered that question; but the other question was entirely different. The question was put as to whether the United States had any right or power except to preserve navigation.

Mr. BORAH. Mr. President, I put that question, and I repeat it, in order that the Senator may not be mistaken. What I want to know is, what right and what power the National Government has in the water of a stream other than to keep that stream open for navigation and to control it for that purpose?

Mr. ROOT. Mr. President, that is another question, but I think the Senators must assume that I would not undertake to detain the Senate on that subject without expressing some views on that particular point.

The right of the United States and the correlative duty of the United States in respect of navigable streams or streams that are capable of being made navigable is not only to preserve and to protect, but it is to promote, and, if it seems it wise, to make navigation; and the whole system—

Mr. BORAH. Mr. President—

Mr. ROOT. I want the Senator from Idaho to let me go on—the whole system, the great system of slack-water navigation, upon which we are spending money by the millions, is in the exercise of that function of the National Government to make navigation, not merely to preserve it, not merely to protect it, but it is to promote it, to extend it, to create it, and if, in the judgment of this Government, the diversion of the water from any stream is likely to interfere with the Government's making it navigable, it is the right of the Government to prevent that diversion.

Now, let me say that it is in the exercise of that function that a large part of the river-improvement work of the United States of recent years has been carried on. I will illustrate by recalling the minds of Senators to the improvement on the Ohio, on the Monongahela, on the Muskingum, the Little Kanawha, the Great Kanawha, the Big Sandy, the Kentucky, the Green, and the Barren Rivers. The United States is engaged in creating waterways which shall furnish control over the cost of transportation, creating waterways that will furnish new avenues of transportation, and it is entitled, it is its duty, to look ahead and see where not only to-day but to-morrow and next year and in the next generation it may be found for the best interests of our people that water communication shall be created by the methods of modern engineering.

It is well settled, of course, we all recognize, that the United States has plenary power to enter upon a system of river improvement, and if there be obstructions require them to be removed, or, if they are not removed, to remove them itself in order that it may discharge its function. It is well settled that a State has the right and the authority paramount over the rights of riparian proprietors to improve the navigation of the streams within the State for purposes of intrastate commerce, and that the United States has still paramount authority whenever that navigation forms a part, as it ordinarily does, of the avenues of interstate or foreign commerce to supersede the action of the State and itself to improve and to create navigation; and it is for the protection of that right and duty of the United States that it is made necessary to obtain the consent of the United States whenever anyone wishes to do work which will obstruct navigation. The consent in ordinary cases under the general law of an officer designated by Congress—ordinarily the Secretary of War—is required to excavations and constructions in navigable waters of the United States under the provisions of the river and harbor act of 1909, I think, which have been carried along since that time.

As to the building of dams, the consent of Congress has to be obtained, and we have passed carefully framed statutes to regulate the form in which the authority shall be granted and in which it shall be exercised.

Now, let me undertake to state some very simple propositions regarding the exercise of this power of the United States in regard to protecting the field of future navigation and the field of present navigation. The consent of Congress must be obtained for the building of a dam, whether that dam affects present navigation or prospective navigation.

The first proposition that I make—and it seems almost too simple to take up time in stating—is that Congress has the power to give or to withhold its consent to persons or corporations seeking to build a dam in a navigable river or a river that can be made navigable, whether that dam will or will not create water power.

Second. The power to give or to withhold the consent of the United States to the building of such a dam results from the right and duty of the Government to preserve and improve navigation under the commerce clause of the Constitution.

Third. The power to give or withhold consent to the building of a dam is absolute and uncontrolled, except by the discretion and judgment of Congress. No power on earth can compel Congress to give its consent or compel Congress to withhold its consent. That power is vested by the people of the United States in their Congress. No court can mandamus it; no court can enjoin it; no Executive can control it. The judgment of Congress alone must determine whether the consent be given or be withheld.

Fourth. The just exercise of the power to give or to withhold must be determined by reference to the object to attain which the power has been granted, and that is the object of preserving or improving navigation.

Fifth. Congress may impose conditions upon the consent which it gives in the exercise of its power to give or withhold. This right to impose conditions is inherent in the power. The right to give or to withhold carries necessarily the right to say, "We give, provided such and such things are done; otherwise we withhold," and that power to impose conditions is illustrated by the statutes which are ordinarily spoken of as the general dam laws. The statute of June 23, 1910, provides:

That in approving the plans, specifications, and location for any dam, such conditions and stipulations may be imposed as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States, which may include the condition that the persons constructing or maintaining such dam shall construct, maintain, and operate, without expense to the United States, in connection with any dam and accessory or appurtenant works, a lock or locks, booms, sluices, or any other structure or structures which the Secretary of War and the Chief of Engineers or Congress at any time may deem necessary in the interests of navigation, in accordance with such plans as they may approve, and also that whenever Congress shall authorize the construction of a lock or other structures for navigation purposes in connection with such dam, the persons owning such dam shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches, and shall grant to the United States free water power or power generated from water power for building and operating such constructions: *Provided further*, That in acting upon said plans as aforesaid the Chief of Engineers and the Secretary of War shall consider the bearing of said structure upon a comprehensive plan for the improvement of the waterway over which it is to be constructed with a view to the promotion of its navigable quality and for the full development of water power; and, as a part of the conditions and stipulations imposed by them, shall provide for improving and developing navigation, and fix such charge or charges for the privilege granted as may be sufficient to restore conditions with respect to navigability as existing at the time such privilege be granted or reimburse the United States for doing the same, and for such additional or further expense as may be incurred by the United States with reference to such project, including the cost of any investigations necessary for approval of plans and of such supervision of construction as may be necessary in the interests of the United States.

The act which is now before Congress reproduces by reference these conditions from the act of 1906, as amended June 23, 1910, and imposes a single further condition. I have ventured to take the time of the Senate in reading this condition imposed by existing general law, because I think in this discussion we have wandered far away from the true nature of the particular bill which is reported by the committee. I venture to say to the Senate that this bill does nothing which is not in its nature identical with the imposition of the conditions contained in these general dam acts.

Mr. CUMMINS. Mr. President, I should like to understand one proposition that the Senator from New York announced a moment ago.

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from Iowa?

Mr. ROOT. I yield.

Mr. CUMMINS. Possibly I misunderstood it, but as I heard it the Senator from New York declared that no dam could be constructed in a navigable stream, nor in a stream that might be made navigable, without the consent of Congress. Have I correctly stated the proposition?

Mr. ROOT. The consent may be an implied consent with regard to a nonnavigable stream. If Congress should undertake to make the stream navigable, it can sweep away the dam that has been built, require it to be removed, or remove it itself.

Mr. CUMMINS. But the Senator from New York did not mean to say, I assume, that a dam built across a nonnavigable stream becomes instantly an unlawful structure?



Mr. ROOT. No; I did not. I do not consider that it does.

Mr. BORAH. Mr. President—

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from Idaho?

Mr. ROOT. Yes.

Mr. BORAH. The Senator stated a few moments ago that we could not compel Congress to give its consent to the construction of a dam, and therefore when it did give its consent it could attach such conditions to it as it saw fit. That is true, in a certain sense, but suppose I put the reverse of that proposition. Suppose some one does construct a dam in a navigable stream, and he is asked to take it out, and he discloses beyond question that it does not interfere with navigation, can he be compelled to take it out?

Mr. ROOT. Mr. President, Congress itself, the Government of the United States itself, must be the judge of that.

Mr. BORAH. Mr. President, I dispute that proposition. The Supreme Court of the United States is the judge of that question, and it will determine it. If it does not interfere with navigation, the person who has constructed the dam can not be compelled to take it out.

Mr. ROOT. If it interferes with the purposes of the United States to create navigation, its removal can be compelled.

Mr. BORAH. That does not change the position I have taken. It must interfere with navigation.

Mr. ROOT. Then the position that the Senator takes does not interfere with the position I take.

Mr. BORAH. But it completely answers the proposition that only one party has an interest in the stream.

Mr. ROOT. I made no such proposition at all. On the contrary, I started with the proposition, and I will restate it, that the only interest the United States has is the interest of preserving and promoting navigation or creating navigation.

Mr. BORAH. Mr. President, that is precisely the position I took in regard to it when I asked the question—whether or not the United States had any interest in the stream except that which relates to navigation.

Mr. ROOT. Ah, Mr. President, that was not the question the Senator asked; but I will ask the Senator not to detain me by going back to discuss questions that have been asked and answered.

Mr. BORAH. Very well; I shall not detain the Senator; but I would like the Senator, when he looks over the RECORD, to see that that is the question I asked.

Mr. ROOT. I will now make my apologies to the Senator from Idaho on the assumption that I shall find that he is right and I am wrong regarding the question that he asked.

I think I was about to state the sixth proposition in the series which I was undertaking to state; that is, that the just limitation upon the conditions to be imposed upon the exercise of the power to grant or withhold consent to the construction of a dam in a stream that is navigable or to be made navigable is to be found in the interest to subserve which the power has been granted to Congress—that is to say, the interest of navigation—and that there is no other limitation upon the just exercise of that power. Congress can not be compelled to grant its consent or to withhold its consent. It may impose conditions upon the granting of its consent, and a refusal to accept the conditions is a refusal of consent. The conditions which it imposes should justly be adapted to promote the interests for which the power to consent was conferred upon Congress—that is to say, the interests of navigation.

The seventh proposition is that Congress alone can determine whether a given condition does or does not subserve those interests. Congress alone can determine the question, because Congress alone has the power to grant or to withhold the consent.

These propositions are so elementary, so simple, that I do not apprehend any controversy about them. But, sir, they lead inevitably to the conclusion that when Congress imposes as a condition of granting consent to the construction of this dam the requirement not only that a lock shall be provided for the passage of vessels but that a part of the proceeds of the water power developed shall be applied to the improvement of navigation of the stream Congress is acting within its power and is performing the duties that the Constitution imposes upon it to preserve and promote the interests of navigation.

There is another line of thought which leads from accepted premises inevitably to the same conclusion. It frequently happens, when one in this illogical world happens by chance to be right, that different lines of consideration will be found converging to the same conclusion. I have reached the specific conclusion of the competency of Congress to impose this condition by considering the nature of the power to give or to withhold consent. Let me now take another line.

The report prepared by the Senator from Minnesota [Mr. NELSON] as chairman of a Subcommittee of the Judiciary of the Senate, acting under a Senate resolution which called upon the Judiciary Committee to give an opinion regarding the power and authority of the National Government over the development and use of water power, treats of the power of the Federal Government to take possession of a portion of the stream and of its banks, and to construct works for the purpose of improving or creating navigation. That report has been referred to frequently here in the course of the argument, and I will state just what it is.

In the Sixty-second Congress, I think at the first session, the Senate passed a resolution directing the Committee on the Judiciary to report to the Senate as early as possible at the next regular session of Congress upon the power and authority of the National Government over the development and use of water power within the respective States, following that with a series of specific questions on the subject.

The Judiciary Committee referred that matter to a subcommittee of which the Senator from Minnesota [Mr. NELSON] was chairman; and the Senator from Minnesota prepared a very careful and very able discussion of the subject. With that paper, as a member of the subcommittee, I was prepared to agree in general, and I joined in reporting it to the Judiciary Committee. It was the subject of extended discussion in the Judiciary Committee, and such a difference of opinion was developed in the committee that the committee came to the conclusion that it had better deal with concrete cases than undertake to report to the Senate an essay upon a general topic, and accordingly it has never reported.

In that statement, which was reported to the Judiciary Committee, were some propositions regarding the matter to which I am now addressing myself—that is, the power of the Federal Government itself to construct such a dam as this that is under consideration, and itself to improve navigation by the expenditure of its own money—and the further view, that in case the Government, in the course of improving or creating navigation upon a stream, incidentally develops water power, it has the same right that any other property owner has to make that contribute toward the performance of the work.

Let me read a few sentences from the statement of the Senator from Minnesota:

For the purpose of promoting and regulating foreign and interstate commerce Congress is given plenary power over all the navigable waters of the United States to the end of improving and maintaining their navigability; and this power is not limited to the navigable sections of streams, but extends to the tributaries and feeders of the same, for without the control of these the power over the navigable sections might become wholly impotent. (*United States v. Rio Grande Co.*, 174 U. S., 690.) Neither can any limits be placed upon the methods of improving the navigability of streams nor upon the means by which commerce can be carried on upon the same.

Science has in recent years evoked from the great storehouse of nature the hidden and well-nigh limitless power of electricity and utilized the same in various ways for the promotion of commerce, industry, and the domestic and social well-being of mankind. The bounds of such power and use can not well be defined or foretold. That such power has become and may still much further become one of the great instrumentalities of commerce is evident. While sail, aside from the oar, was the only known motive power on water, the limits of navigation was confined to tidewater. The discovery of steam extended navigation on our streams far beyond the limits of tidewater, and who can tell how much further hydroelectric power generated by a dam in a stream may extend navigation on that or some other stream? The water in a stream may not only be used to float and carry a vessel, a boat, or a barge, but it may also be used to furnish the motive power for the navigation of the same. And a dam erected in a stream carrying interstate commerce can well be utilized for this double purpose; and Congress, having jurisdiction over the improvement and regulation of an interstate navigable stream, has ample power to resort to all reasonable means for the improvement of navigation and the promotion of commerce on such a stream. (*Gibbons v. Ogden*, 9 Wheat., 1.)

If for the purpose of improving the navigability of a stream carrying interstate commerce the Federal Government constructs and maintains a dam, with locks and gates, the Government has the undoubted right to establish and maintain, in connection with such dam, an electric-power plant for the purpose of furnishing motive power to operate such locks and gates. And the Federal Government has the right to sell, lease, or rent, for compensation, any surplus power that may arise from and be an incident to such an improvement of navigation. (*Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co.*, 142 U. S., 254.)

In considering those statements we must bear in mind that when Congress undertakes to construct a dam it of necessity becomes the riparian proprietor, and, subject to minor statutory modifications in all the States that follow the course of the common law, as Connecticut and Massachusetts have followed it, the riparian proprietor has the right to the usufruct in the flow of the water.

We talk about ownership of water. Senators have discussed the question whether the State owns this water or the riparian proprietor owns this water, and have seemed to be impressed by the idea that the United States was attempting to assert ownership of the water. Mr. President, under the system which



prevails in Connecticut and Massachusetts, and generally in the States following the common law, there is no ownership of running water whatever.

Both the rights of the riparian proprietor and the rights of the State are based upon the old maxim that water runs and ought to run as it has been accustomed to run. The riparian proprietor is entitled to whatever benefit may come from the flowage of the water past his door. Whether the riparian proprietor owns the bed of the stream or the State owns the bed of the stream makes no practical difference, for if the riparian proprietor owns it he owns it subject to the public right of passage and in general of fishery and the public right to have the water flow on for the benefit of all below on the stream.

Mr. President, that does not apply in the States which have established the right of prior appropriation. The so-called arid or semiarid States have adopted, by the necessity of the conditions existing there, a different system, and any discussion of the rights of the Government and of the propriety of legislation in those States would necessarily have to proceed upon different lines and from different starting points than a discussion of legislation relating to water rights in one of the old States which proceed according to the common law.

If the riparian proprietor owns the bed of the stream, he owns it subject to the common right. If the State owns the bed of the stream, the State owns it as trustee for the public, for the preservation of those same common rights, and subject to the rights of the riparian proprietor. There is and can be no conflict between the two, and the question of title to the bed of the stream is quite immaterial.

I have said that when the Government enters upon an enterprise of this kind it of necessity becomes the riparian proprietor, for it can not build a dam without title, and it can not take property without compensation. So it in some manner acquires the title, and having acquired the title its title is good, because it is acquired in the exercise of its clear and unquestionable constitutional rights and the performance of its constitutional duty. The title is as clear as a title to land acquired for a post office or a customhouse or an Army post.

Having title, two things follow: One, that it is entitled to use the property it has acquired for this constitutional purpose in every way that would be lawful for anybody else seeking to accomplish such a purpose; and the other, that it has right to such use of it as any other proprietorship gives to the owner of property. That being so, the right to sell or lease the water power or the electricity created by the water power from the increased flowage caused by a dam built by the Government in the exercise of its constitutional functions to improve navigation is a necessary incident to the performance of the function.

Mr. President, so long as it is competent for the Government of the United States to go upon the Connecticut River and build the dam described in this bill and so long as it is also competent for the United States to apply the power produced by its building of the dam to promote the interests for which it builds a dam, it follows necessarily that the Government of the United States can avail itself of the instrumentality of this corporation to cause the same thing to be done. It has as clear a right to make a contract with this corporation to do that thing which the Government can do itself for the promotion of its interests in the performance of its duty to improve navigation as it has to hire a contractor to dredge the Potomac to improve the Washington channel.

Let me call your attention to the real situation as it exists in the Connecticut River. Three years ago the Board of Engineers for Rivers and Harbors reported to the War Department regarding the improvement of the navigation of the Connecticut River, and in their report occurred this statement, which I read:

The difficulty of surmounting the Enfield Rapids involves such an expenditure that unless water power can be developed in connection with the improvement, the work can not be justified under present conditions. If the coordination of water power and navigation interests can be effected in such a manner as to permit the development of both at a cost to the United States not out of proportion to expected benefits to general navigation and commerce, the improvement will become justifiable.

There is the attitude of the United States toward this improvement of navigation. Then comes to the Government of the United States the Connecticut River Co. and says, "We will improve this navigation if you will give your consent that we build a bigger dam than we have now. We will improve this navigation; we own the banks; we have the corporate capacity and the authority from the State of Connecticut; and if you will consent we will do what your engineers have declared you could not afford to do unless the expense could be in some part borne by the power that was created." And the United States in this bill will say, if we pass it, "Yes; we will avail ourselves of your instrumentality to do what we could not afford to do except by taking and selling power, provided you will agree that

a reasonable charge upon what you make by the end of the business that you are specially interested in, that is, the water power, shall be turned over to be applied to the improvement of navigation upon this stream and its connected waters. That is to say, we will consent to your improving this navigation provided you will do two things for the benefit of navigation; one, improve the navigation at this point, and the other, contribute to improving the navigation of the whole stream."

Mr. President, a waterway is a whole. Navigation at a particular point does not stand by itself. The streams that we have been working upon for many years we improve step by step, mile by mile, beginning with a dam here, making a pool above it, and going on and building another and another and another. Each is as much a whole as any transcontinental line. The Supreme Court of the United States based its decision in the Rio Grande case in the one hundred and seventy-fourth United States upon that proposition, that although the portion of the Rio Grande, the treatment of which was called in question, was not navigable, nevertheless, the Rio Grande must be treated as a whole, and the treatment of that nonnavigable part must be considered with reference to its effect upon the navigation of the lower part of the stream. Therefore, Federal authority could deal with it.

Upon no other ground, sir, do we justify ourselves in the purchase of Appalachian forest reserves except to preserve and give out gradually the water which flows down through the navigable streams of the Atlantic seaboard.

From the mouth to the source and in all the contributory feeders a water system of navigation must be treated as a whole; and that is what this condition does.

It treats the Connecticut River system of water transportation as a whole, which, for example, will enable the people of that region, that hive of industry, to have the benefit of competition with the New York & New Haven Railroad.

The justice of the remarks which I have just made is very acutely presented by a consideration of the charter of the Connecticut River Co. Something was said here the other day about the motive of building this dam, and I undertook then to say that there were ordinarily two motives in such a transaction. Some Senator had been speaking about the motive of this company as being to create power and not to improve navigation. It seems quite plain that in most transactions in this world there are two motives. If I get upon a street car to go from the Capitol to my home, my motive is to get home; the motive of the street car company is to get my 5-cent piece. It is difficult to conceive of a bargain in which the promisor and the promisee have not each a different motive. In this case, Mr. President, I assert that the motive of the United States is the improvement of the navigation of the Connecticut River system of water transportation and that, if this bill be passed, we shall be availing ourselves of the willingness of this company to subserve that great constitutional purpose of our Government in no other way than I avail myself of the service of a street car to subserve my purpose of getting to my home from the Capitol. The fact that the company may have a desire for a profit does not affect the rights, powers, and duties of the United States Government to go on and subserve the interests of navigation upon that river any more than the fact that a dredging contractor is moved by the motive of profit rather than the motive to improve the stream which the Corps of Engineers employs him to dredge.

But, sir, this company is a company formed by the State of Connecticut to improve navigation. Its lawful purpose is and has to be to improve navigation. Here is their charter, passed in May, 1824:

*Resolved by this assembly—*

*The Assembly of Connecticut—*

That John T. Peters, David Porter, Charles Sigourney, with all such persons as are or may be associated with them for the purpose of improving the boat navigation of Connecticut River, and their successors, be, and they are hereby, incorporated and made a body politic, by the name of The Connecticut River Co.

The charter goes on to say, after various details of organization:

SEC. 7. That said corporation, for the purpose of widening the channel of said river, and deepening the same, shall have power to dig, cleanse, and remove obstructions from the channels and bars of said river, from and above the bridge at Hartford, to Springfield, and to erect and build wharves and piers and hedges in said river or on the banks thereof, as they may judge necessary.

And said corporation is empowered to lock the falls at Enfield on said river, and to make channels to aid them, and to construct a canal on either bank of said river, near said falls, and to construct a dam or dams for the purpose of entering and leaving the locks in still water, provided the extension and form thereof shall be such as shall not prevent the convenient passage of boats and lumber down the river, nor obstruct the passage of fish; and said corporation shall have the right to procure and possess any steamboat or boats which they may judge necessary to commerce on said river.



Then there is the right of eminent domain; there is the right to purchase and hold stock of the several incorporated lock and canal companies upon the Connecticut River; there is the right to impose tolls upon boats passing up and down the river. There is a provision that—

Whenever the profits accruing to said corporation shall be more than 8 per cent over and above the annual expenses of improvements on said river, and the repairs of said locks and canals, and the works connected therewith, the commissioners shall have the right to reduce the toll allowed by this act.

Then there were from time to time amendments, one of which was passed in 1825, providing:

The capital stock of said company, so far as shall be deemed necessary and expedient, may be expended between Hartford and the north line of this State to Longmeadow and West Springfield in the State of Massachusetts, and also in improving said navigation above this State toward the sources of Connecticut River and toward Lake Memphremagog in the State of Vermont, as far as shall be deemed practicable and expedient, lawful authority for so doing being had and obtained.

That is from Vermont or Massachusetts.

You will perceive, sir, that this charter is a charter which looked to the improvement of the whole stream, the creation of a transportation line by the Connecticut River Co.

Mr. BRANDEGEE. I will say that the company was also incorporated by the State of Vermont.

Mr. ROOT. So I understand. I think I have read enough to indicate the character of this corporation, with the added statement of the Senator from Connecticut [Mr. BRANDEGEE] that it also received a charter from the State of Vermont consistent with this legislation of Connecticut. So, sir, we have a navigation company chartered by the States of Connecticut and Vermont, whose sole corporate purpose is to improve navigation, coming to the United States, whose sole constitutional purpose is to improve navigation, and it appears that the powers which this company had from the State of Connecticut and the powers which the United States Government has under the Constitution to improve navigation, which have lain dormant with regard to this river because it would be too expensive to make the improvements, may be called into activity by reason of the fact that, under the new discoveries in electrical engineering, it is possible to make the fall of the water over the dam that is necessary to improve the navigation contribute toward the performance of the work.

Here is something that this company was chartered to do, and which it can do if we consent; here is something that we have the constitutional power and duty to do. As a condition of our consent, instead of the company taking all the profit that comes from the fall of water at this particular point and putting it in their pockets, we impose the condition that they shall apply a reasonable amount toward the performance of their and our full duty, which is improving the navigation of the whole stream.

Mr. SMITH of Arizona. Mr. President, at that point will the Senator from New York permit me to interrupt him? I am much interested in his argument.

The PRESIDING OFFICER (Mr. FOSTER in the chair). Does the Senator from New York yield to the Senator from Arizona?

Mr. ROOT. Certainly; I yield.

Mr. SMITH of Arizona. The Senator concedes that they have a right to make this charge, but what application are they to make of it? How far can the Government apply the money obtained from these sources? In other words, must not the money brought from this power into the Treasury of the United States be used exclusively in the navigation of the stream, or can they devote it to a separate purpose?

Mr. ROOT. Mr. President, I conceive that the fund would be a trust fund in the Treasury of the United States, applicable only to the improvement of the navigation of that stream, using the term "that stream" in its comprehensive sense, with its feeders and connections. I conceive that to be quite clear from the language of this bill, and I think that it is right that it should be made so; although, sir, I do not consider that it is by any means clear that the Government of the United States may not create a general improvement fund, which might be used for the improvement of navigation elsewhere than upon the stream from which a particular fund comes. That question is not raised here, however. This bill proposes to confine the application of this trust fund to the improvement of the navigation of this river, to confine it to substantially the same limits which are laid down in the charter of this company as the measure of its duty.

Mr. President, there are two general considerations which affect this bill. I conceive that it does not materially affect the interests of the arid and semiarid States. I conceive that it does not raise any question about title or property or corporate franchises whatever. It is a simple case of the Government being asked for the same kind of consent that it has

given a thousand times, and to impose a condition—a thing that it has done a hundred times—which is limited in its character to the attainment of the purposes for which the power to give or withhold consent is granted Congress, to impose a condition which will accomplish nothing more than the Government itself could accomplish by having contractors go on and do the work. I think the competency of Congress to pass the law and the justice and the wisdom of its passing the law are clear.

As I have said, however, there are two general considerations which have been much referred to in the discussion, both of which, it seems to me, lead to the same conclusion and tend to strengthen the duty of Congress to grant this consent upon this condition. One is the general consideration of the improvement of navigation. Of course we are in this country very far behind many of the older countries on the other side of the Atlantic in the provision which we have made for water communication. Our Government has spent many, many millions of dollars in improving the navigation of our streams; it has constantly engaged in that work; but, nevertheless, we are far behind the older countries. In recent times we have been developing a system of slack-water navigation, by which it is possible to carry water navigation far up into the region of the hills through which our great streams flow, and to give to the people living in the uplands the benefit of water lines in competition with the railroads; but it costs very much more to do that than it does to improve the navigation of streams running through level country. You can dredge out the channel of a stream such as the Hudson at comparatively little expense; but the State of New York is spending over a hundred million dollars in canalizing the Mohawk River, which runs through the hills by my own home, and the Oneida and Oswego Rivers, and in constructing canals to connect them with each other and with Lake Erie.

The question, I think, we ought to ask ourselves is, How shall we decide as between three possible courses of conduct? One is to do as we have, in general, done in the past, refrain from improving because it costs too much, costs more than the business to be developed would justify; or, second, shall we go on and improve these streams and tax the entire people of the country for the improvement? Or, third, shall we avail ourselves of this new discovery by which a stream can be made to improve itself, by which a stream can be made to pay the expense of fitting itself for navigation, so that this great work of internal improvement may go on? Which of the three shall we do?

Mr. President, of course it is very desirable that the flowage of streams converted into electricity shall be made available for the uses of the inhabitants along their banks; but is there nothing to be said for the paramount right, the paramount duty, we have to promote navigation? Is that to be left out of consideration when we are thinking of the possible utilities of this great new wealth that has been discovered, a wealth that riparian proprietors never dreamed of when they got their title to their lands? When for the public interest, when for the benefit of all the people of all our country, we consider the exercise of our paramount power as to the utilization of this new and hitherto unsuspected wealth are we to leave out of consideration altogether the one interest that we are charged by the Constitution with subserving, maintaining, and advancing?

This provision undertakes to discharge the duty of the Congress of the United States, as the preserver and promoter of water navigation, by requiring that a little fragment of this new wealth to be realized with our consent by this company, also bound to subserve navigation, shall be applied to that paramount purpose in this stream—a little fragment of it.

Mr. THOMAS. Mr. President—

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Colorado?

Mr. ROOT. Certainly. It is very pleasant for me to see the Senator from Colorado renew the situation of 30 years ago, when we first met in the Supreme Court of the United States.

Mr. THOMAS. Yes, Mr. President; that was our first meeting, with the Senator upon one side and myself upon the other, in an important controversy in which I was, of course, unsuccessful.

Mr. BRANDEGEE. I hope it was a parallel case to this.

Mr. THOMAS. Not entirely. My purpose in interrupting the Senator was to correct a possible impression which I might have created yesterday in my remarks upon this bill.

I recognize the paramount authority of the Government of the United States over navigable streams and its duty to all the people to improve them for purposes of navigation. But does not the Senator lose sight of the fact that this paramount power is being utilized as an agency or medium, through the

operations of the Government or by contract with private parties, whereby improvements in water power are effected? In other words, is not this great sovereign attribute of the National Government being utilized and degraded into an agency for the production of water power to generate electricity as an asset in the hands of these great corporations?

Mr. ROOT. Mr. President, that is a queer view to be suggested in support of opposition to requiring this great corporation to pay something to promote navigation. As I look back at the case in the Supreme Court of which we were speaking, it was nothing but the fact that I happened to be on the right side of the case that led to the conclusion the Senator has mentioned; and I am afraid he is in as bad luck now as he was then.

Mr. THOMAS. On the contrary, I may be in as bad luck in the outcome. But the fact that this great corporation is willing to spend huge sums of money in order that it may acquire a profit to itself, and is ready to agree, as the Senator from Ohio [Mr. BURTON] said, to enter into this agreement and to perform it, indicates that its purpose is to obtain, through the agency of the Government, a property in water which belongs either to the riparian owner or to the State, or to both, under the pretense that it is engaged in promoting and developing the navigability of the river.

I do not think any such power should be used for such a purpose unless it is done openly and without any pretense that it is being done for the improvement of navigation, independently of the fact that the power or the property, whatever it may be, which is created, instead of belonging to the Government, belongs either to the riparian proprietor or to the State, or both; so that the agency of the National Government in the exercise of a sovereign power is developed into a proprietary right and then conferred upon private parties for their benefit.

Mr. BANKHEAD. Mr. President—

Mr. ROOT. Mr. President, I am about concluding, and I will ask the Senator not to interrupt me further. I want to answer what has been said by the Senator from Colorado.

As I have already stated, this corporation, which is not a very big one, is the riparian proprietor, and it has from the State a grant of power and authority to do this thing. There is not anybody concerned but that corporation, trying to do what it was incorporated for, and the Government of the United States, trying to have it do what it was incorporated for. Of course it would not do it unless it could make some money out of it. Why should we spend our time objecting to having things done by people who are willing to do them when we can not compel them if they are not willing to do them? Of course this company expects to make money out of the power. What is objected to in the case of this bill is that we are going to require them to pay over part of the money they make toward the improvement of navigation.

Mr. THOMAS. That is not my objection.

Mr. ROOT. I am glad to hear the Senator say that. Perhaps he will vote for the bill, then.

Mr. THOMAS. No, no.

Mr. ROOT. In every transaction, sir, there are two motives. The seller has one and the buyer has another. The passenger has one and the railroad company or the steamboat owners have another. The Government, charged with improving navigation, finds that a corporation is willing to do for it what it can not conveniently or profitably do for itself to subserve its object. It has one object; the corporation has another. We would not consent to this if it were not a benefit to navigation. They would not ask the consent if it were not a benefit to their pocket. The question is whether there is reason in the proportion of things. The question is so often, however, whether the benefit to the pocket of the corporation is not a million times the advantage it gives to the public. The opposition to this bill is based upon the very provision which requires the corporation to contribute toward the object for which it was chartered and toward the object to which we are asked to give consent, instead of taking all the profit to itself.

Mr. THOMAS. Mr. President—

Mr. ROOT. I will conclude in a moment.

Mr. THOMAS. I should like to ask a question of the Senator.

Mr. ROOT. I will conclude in a moment and give the Senator full opportunity to discuss the matter.

There is one other great subject which this discussion touches, and any consideration of that, I think, must tend toward approval of the bill rather than toward opposition to it. That is the general subject of conservation.

Of course every candid mind familiar with the history of the growth and development of our country must realize that in the extravagance of our vast natural wealth the Government has

given away franchises and property with a lavish hand, and that probably the time has come when it would be wise and reasonable for Congress, as trustee for the people, to exercise somewhat more care in conferring upon individuals or particular corporations large blocks of our natural wealth. The lavishness with which our natural wealth has been portioned out has applied equally to the States. Some States have been cautious, but some States have been very incautious and reckless in the way in which they have granted franchises and property rights to corporations. I think there is a general feeling throughout the country among the people of the States that there ought to be greater restraint exercised in that respect by the State governments.

We were waked up to that situation by a tremendous row being made. It required somebody to stand up and scream loudly before we realized it. I think reasonable, candid, thoughtful men must come to the conclusion, when they consider that subject, that we are under obligations to certain gentlemen who made so great a noise about this subject as to rivet the attention of the people of the country upon it. There are some Members of this body to whom I make my acknowledgment for the activity, the ability, and the persistency with which they have demanded attention to this subject.

The first thing that was done, and, in the nature of things, the first thing that could be done toward accomplishing this object was to put a stop—and we put a stop here in Congress and in our National Government—to the process as it applied to handing out valuable things that belonged to the people of the United States. In the nature of things, also, the complete stoppage of the process presently led to inconvenience, and people began to complain. We had a joint committee here, on which I sat for months, listening to testimony in which the two ideas were exhibited. I refer to the Ballinger committee. It was quite plain that there were two ideas, each one an idea that nobody need be ashamed of, but coming in conflict, because neither had adjusted itself to the other—the idea of stopping the wasteful and extravagant parceling out to individuals of the property of the whole public and the policy of utilizing our wealth for the benefit of the people of the country, and that can not be done without leaving somebody to make a profit by the utilization of that wealth.

A good deal of the opposition to this bill is the result of an impatience that is felt, and very naturally felt, by people in the West, over the long continuance of the cessation, the halt that was called, in order to prevent undue extravagance and lavishness and favoritism and all sorts of abuses in the way of handing over to individuals and corporations the public wealth.

The third step which must follow, if we do our duty and understand our business, is not to go back to the old plan of handing out public property to oblige this, that, and the other man because it will make activity and expenditure, but to evolve some reasonable method by which these great natural resources shall be not held for far-distant generations alone, but utilized in such a way that the public will get its fair benefit, and the individual will get only his fair benefit.

Nobody is going to dispute any of the things I have been saying for several minutes past. What is the conclusion? It is that when we deal with this bill we should deal with it, not upon the old plan, not upon the plan of stagnation, but trying to apply a reasonable view as to what shall be done in this instance in regard to the utilization of the wealth and the productive power that exists in this country.

Mr. President, you can not solve the question solely by reference to the old rules of property. They are not wholly adequate to produce a satisfactory conclusion. I am not afraid of having anybody think that I am unduly iconoclastic—

Mr. CLARKE of Arkansas. Progressive.

Mr. ROOT. Or progressive; not unduly so. I used to be a reformer; but I rode on a freight train, and the express train went by so fast that I seemed to be standing still. So I say I am not afraid of being misjudged in that direction when I say, as I do, that the old rules of property, which I would not disturb on any account—property which is one of the bases of civilization, and which we must protect—do not by themselves alone lead to an altogether satisfactory conclusion on this subject.

One reason why is that modern discovery and invention have produced a realization of the existence of wealth wholly unknown before. When this company was chartered by the State of Connecticut no one dreamed of any source of income for the company except from tolls. You see the charter treats of tolls and the regulation of tolls, how much they can charge and how they may be regulated.

It appears that now in doing the very work that was contemplated by this company for the improvement of navigation



out of which they expected to get a moderate profit by tolls they are creating wealth beyond the dreams of avarice. Nobody knew it when the charter was granted. Nobody knew it when the people bought their land. Nobody knew it when they exercised their right of eminent domain and took land from the farmers there.

All over the country there are vast reservoirs of wealth the existence of which nobody knew when lands were settled under the homestead act, when lands were purchased and when lands were granted; and while we must preserve the rights of the owners, yet so far as those rights are subject to lawful control, so far as those rights are subject to laws that existed when the titles were acquired, to laws under which the titles are held, so far we ought to see that by the application of those laws in lawful ways and without taking away anybody's right we give to the whole people of the United States such benefit from this great new work as they may lawfully have.

I say, sir, that the truest policy and the highest respect for every object which government is designed to subserve dictate that when we exercise an undoubted legal power and impose a condition upon the use by this corporation of this property some slight part of the wealth produced shall be devoted to the improvement of the navigation of that stream for the common benefit of the people of the United States.

Mr. WORKS obtained the floor.

Mr. BANKHEAD. Will the Senator excuse me one moment?

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Alabama?

Mr. WORKS. Certainly.

Mr. BANKHEAD. Before the Senator from New York takes his seat I should like to call his attention to a provision of the bill which he has been discussing so ably, and I should like to have his view about it some time, a little later, if he prefers to make it later.

Section 3 of the bill requires the Connecticut River Co. to construct a lock and equip it under the direction of the Secretary of War and the supervision of the Chief of Engineers, and the bill provides that when thus completed it shall be turned over to the United States Government free of cost. The bill makes no provision whatever for the company to turn the dam over to the Government. Therefore the Government is the owner of the lock and the Connecticut River Co. is the owner of the dam.

The inquiry I wanted to make is, if there is a power created out of this situation, whether it is in the lock which the Government owns or in the dam which the private company owns. There can be no power unless it is produced by reason of the construction of the dam which belongs now and always has belonged to the private owner. If there is surplus water and that surplus water is utilized for power, it is a surplus not needed at all for navigation. Does the Senator from New York think it does not properly belong to the owner of the dam?

Mr. ROOT. Mr. President, I think it properly belongs to the owner of the dam, subject to a charge imposed by this bill upon it as a condition to granting consent to build it.

Mr. BANKHEAD. I understand that.

Mr. ROOT. The Senator from Alabama asks whether the power is in the lock or in the dam. The power comes from the flowage of the water which is raised above the level by the dam. The lock does not produce any power.

Mr. BANKHEAD. Of course not.

Mr. ROOT. The dam raises the water and the fall of the water produces the electric power.

Mr. BANKHEAD. Certainly.

Mr. ROOT. The Senator from Mississippi [Mr. WILLIAMS] suggests to me a question which I will make bold to put to the Senator from Alabama, and that is whether the egg produces the chicken or whether the chicken produces the egg.

Mr. BANKHEAD. Mr. President, one word further and I am through. The Senator's argument on this whole question reminds me of two boys who went fishing. As they went along one said to the other, "If you will furnish the pole, and the line, and the hook, and the bait, you can have half the fish you catch." The other said, "Well, I will take what I catch, and you may have what is left." That is the whole question here.

#### PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. Latta, executive clerk, announced that the President had approved and signed the following acts and joint resolution:

On February 7, 1913:

S. J. Res. 156. Joint resolution to appoint George Gray a member of the Board of Regents of the Smithsonian Institution.

On February 11, 1913:

S. 3225. An act providing when patents shall issue to the purchaser or heirs of certain lands in the State of Oregon.

On February 12, 1913:

S. 7160. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors; and

S. 8034. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

SENATOR FROM COLORADO.

Mr. GUGGENHEIM presented the credentials of JOHN FRANKLIN SHAFROTH, chosen by the Legislature of the State of Colorado a Senator from that State for the term beginning March 4, 1913, which were read and ordered to be filed.

Mr. BRANDEGEE. Mr. President—

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Connecticut?

Mr. WORKS. I yield to the Senator.

Mr. BRANDEGEE. I did not object to the reception of credentials, of course, but I hope as the matter will appear in the Record it will not be appealed to as a precedent for violating the unanimous-consent agreement. Under it no morning business is allowed.

The PRESIDING OFFICER. The Chair holds that the filing of the credentials of a Senator elect is a question of the highest privilege.

CONNECTICUT RIVER DAM.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River above the village of Windsor Locks, in the State of Connecticut.

Mr. WORKS. Mr. President, the people of my State have a deep and an abiding interest in the question presented by this bill. We believe thoroughly in the doctrine of the conservation of the natural resources of the country, for with us the conservation of the waters of flowing streams in the State is a practical question. We are not in favor of conserving the waters in the streams to look at as they flow down to the sea, but for actual use by the people of the State.

It is for that reason, Mr. President, that I shall take up a very little of the time of the Senate in discussing the pending bill. In order to consider it intelligently, we must distinguish clearly in the beginning between the right of the National Government to deal with the question of the navigability of a stream and the right of the States and their inhabitants to use the waters of a stream for beneficial purposes.

The Senator from New York [Mr. ROOT] has stated very broadly the right of the Government in that respect. I am not disposed to question his view of the law with respect to the power of the Government to deal with the question of the navigable quality of a stream. For the purposes of this discussion I am willing to concede that the Government has not only the right to protect the navigation of a stream that is now navigable but that it has the right also to promote navigation and to make streams navigable that are not so now.

But when you come to the last proposition you must deal with the people who have acquired rights in the waters of the streams. So far as the use of the water is concerned, so long as it does not interfere with navigation, the Government has no power or control over it. That is a matter which must be dealt with by the States. Any right to the use of the water flowing in a stream, whether it be navigable or nonnavigable, is governed and controlled by the laws of the State and not of the National Government.

The Senator from New York has discussed this question as if it were one solely between the Government and this corporation. He has left out of account entirely the people who may become consumers under the corporation and who will eventually, as I will show after a little, be compelled to pay the charge that is imposed by the Government upon the corporation. What does the corporation care whether the Government imposes this burden upon it or not if it can, under the law, shift that burden to the people who take the power that is generated by the use of the waters of the stream?

In most of the Western States the old common-law right of a riparian owner to the use of a stream has been absolutely abolished by constitutional provision. In some of the States it is declared in terms in the constitution that the waters flowing in the streams in the State belong to the people. That was unnecessary. Without such a provision they belong to the State, and the people are the State. It is only a popular way of declaring the rights of the people of the State to the waters of the streams.

Every State in the West has statutory provisions under which rights to the use of the water in the streams may be acquired.

For example, in my own State we have statutory provisions providing for the filing upon the streams to be diverted for beneficial use by giving notice of the fact. The notice must state the amount of water proposed to be appropriated and the use to which it is to be applied. The right to the use of the water is acquired by complying with this statute. It may be done by a municipality, by the State, or by a private individual. So long as there are waters in the stream unappropriated any individual who may use the water for beneficial purposes has a right to enter upon the stream, make his filling, take out the water, and apply it to those uses.

That may be done, Mr. President, by a corporation that does not expect to use the water for its own purposes but to distribute and sell it to other persons as a means of making money. Whenever the water is diverted by that means and for that purpose the rates to be charged become subject to regulation, not by the National Government but by the State; and when you come to the question of fixing rates it is settled by a long line of authorities, not only in the State but by decisions of the Supreme Court of the United States, that the persons who take the water from corporations of this kind may be charged such rates as will repay to the corporation all of its fixed charges, interest upon its investment, and a reasonable profit to the corporation.

Now, what would be the result in this case under the well-settled rule on that subject? If, upon one of these corporations taking water from the stream for the purpose of carrying the water itself to a beneficial use, as in the case of irrigation or for the development and generation of power, the National Government should impose \$100,000 for that purpose, that amount of money would be charged up by the corporation as a part of its operating expenses, and the consumers would be compelled to pay it. The fact that the money thus acquired by the Government is to be applied to the improvement of navigation on the river makes it no better. In that case the consumers of power furnished by this company will have to bear the whole burden of this improvement, which should, as in other cases, be borne by the whole people.

So there is somebody else interested in this question of the amount to be paid by the corporation besides the corporation itself. In fact, it has very little interest in the question, because it is entitled to have every dollar of the money that it pays out in that way returned to it by the consumers.

Let us apply that condition of the law to the provisions of this bill. It is unfortunate, Mr. President, that the right and desire of the State of Connecticut to have this privilege granted to this corporation should be complicated by the effect it is bound to have upon people in the Western States.

It is said that this is but one case, and that it can not be considered as a precedent that will affect other dealings with questions of this kind; but the truth about it is that that is just exactly what the Government proposes to make it, and that is the policy the Government is insisting upon in dealing with the question of granting rights of this kind.

The bill, after granting the right to construct this dam and lock, has this provision:

*And provided further,* That the Secretary of War, as a part of the conditions and stipulations referred to in said act, may, in his discretion, impose a reasonable annual charge or return, to be paid by the said corporation or its assigns to the United States, the proceeds thereof to be used for the development of navigation on the Connecticut River and the waters connected therewith. In fixing such charge, if any, the Secretary of War shall take into consideration the existing rights and property of said corporation and the amounts spent and required to be spent by it in improving the navigation of said river, and no charge shall be imposed which shall be such as to deprive the said corporation of a reasonable return on the fair value of such dam and appurtenant works and property, allowing for the cost of construction, maintenance and renewal, and for depreciation charges.

It is said here, Mr. President, that this is not intended to be a tax upon the water or to interfere with the use of the water, but for the mere privilege of erecting this structure in the stream. But what is the effect of it? The only purpose for which this structure is placed there is to divert and use the waters of the stream, and the tax that it imposes, as I have said already, will be charged up against the consumers themselves. Therefore, whether it is intended to be so or not, it is a direct charge upon the use of the water or the power that is developed by its use.

It is provided in the bill, in substance, that it shall not deprive the corporation of a reasonable return upon the cost of the structure. That shows an utter lack of appreciation of the law as it exists, because it will have no effect under the law upon the returns to be received by the corporation itself, for the simple reason that that charge, as I have already said, is imposed upon the people themselves and not upon the corporation, and could not deprive it of any part of the revenue that it is entitled to receive.

Mr. BORAH. Mr. President—

The PRESIDING OFFICER (Mr. FOSTER in the chair). Does the Senator from California yield to the Senator from Idaho?

Mr. WORKS. I yield to the Senator.

Mr. BORAH. I wish to make a suggestion in that connection. Suppose a public-utilities commission were created in Connecticut—I do not know whether the State has one or not—and this corporation should come before it for the purpose of having its rates fixed, the public-utilities commission in fixing the rates for this corporation would be compelled to include the charge which the Secretary of War is putting upon the corporation for the purpose of fixing rates for the consumers.

Mr. WORKS. Certainly. I have so stated.

Mr. BORAH. It would enter that under the law, not as a matter of discretion but as a matter of necessity, in testing the question whether the corporation was getting any return and its property was not being confiscated. You would have to insert that in the question of the expenditure.

Mr. WORKS. Undoubtedly so. Let me pursue the provisions of the bill a little further in order to show what is really intended by its provisions. There is another provision on page 5:

And the said corporation shall furnish to the United States, free of charge, water power, or power generated from water power, for operating and lighting the said constructions; and no tolls or charges of any kind shall be imposed or collected for the passage of any boat through the said lock or through any of the locks or canal of said corporation.

By that provision it is evidently intended that the National Government shall acquire some right to the use of this water, and acquire it without compensation, while the other consumers are compelled to pay for the power that they receive in that way and the added amount that the Government is imposing on the corporation.

Mr. BRANDEGEE. Mr. President—

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Connecticut?

Mr. WORKS. I yield.

Mr. BRANDEGEE. The provision the Senator has just read is embodied in every bill of this character. It is one of the conditions imposed by the general-dam act, subject to which all these bills are granted.

Mr. WORKS. That may be so, but it does not make it any better.

Mr. BRANDEGEE. Of course not.

Mr. WORKS. If we have been erring in that respect, it is about time that the policy of the Government should be changed.

Again, it is provided in section 4:

That compensation shall be made by the said Connecticut River Co. to all persons or corporations whose lands or other property may be taken, overflowed, or otherwise damaged by the construction, maintenance, and operation of the said dam, lock, and appurtenant and accessory works, in accordance with the laws of the State where such lands or other property may be situated; but the United States shall not be held to have incurred any liability for such damages by the passage of this act.

That provision of the bill is entirely unnecessary. There is no reason why the National Government should attempt to protect the interest of the land owners who are under the control of the laws of the State and should be protected by the State. In other words, the Government is attempting all along through the bill to infringe upon the laws and the rights not only of the States, but of individuals within the State.

Then, the bill provides in section 5:

That upon the termination for any cause whatever of the authority, rights, and privileges granted hereby, or any renewal thereof, the United States may renew the same or the grant may be made or transferred to other parties.

The Senator from New York [Mr. ROOR] has insisted that this does not constitute a grant, that it does not convey any right to anybody, that it is nothing more nor less than a simple permit given to this corporation to enter upon the stream as it asks to be allowed to do; but it is provided that not only the Government may regrant to somebody else, but it also provides that the Government itself may take over this property and use it, and itself become a public-utility corporation. It further provides that—

Unless the grant is renewed to the original grantee or its assigns, as herein provided, the United States shall pay or require its new grantee to pay to said original grantees or its assigns, as full compensation, the reasonable value of the improvements and appurtenant works constructed under the authority of this act and of the property belonging to said corporation necessary for the development hereby authorized, exclusive of the value of the authority hereby granted.

The Government proposes to purchase not only the structure that is placed in the stream, but it proposes to take over this whole system by which power is generated and transferred to



the consumers. By what right may the National Government under a grant or permit of this kind, whichever we may call it, provide that it shall become the purchaser of the entire system of this corporation to be used for the distribution of power?

Said improvements and appurtenant works and property shall include the lands and riparian rights acquired for the purposes of such development, the dam and other structures, and also the equipment useful and convenient for the generation of hydroelectric power or hydro-mechanical power, and the transmission system from generation plant to initial points of distribution, but shall not include any other property whatsoever.

The Government proposes under the bill to purchase not only the structure I have mentioned, but the riparian lands of the corporation and its entire system for the distribution of power.

Then the bill provides that—

The basis for determining the value shall be the cost of replacing the structures necessary for the development and transmission of hydroelectric power by other structures capable of developing and transmitting the same amount of marketable power with equal efficiency, allowance being made for deterioration, if any, of the existing structures in estimating such efficiency, together with the fair value of other properties herein defined, to which not more than 10 per cent may be added to compensate for the expenditure of initial cost and experimentation charges and other proper expenditures in the cost of the plant which may not be represented in the replacement valuation herein provided.

Mr. President, how can it be said under the various provisions of this bill that it is not a grant? If it is not a grant, what has the Government to buy of this corporation? What property interest is there as a result of the action taken by the National Government that could be bought by the Government itself?

These structures so placed in this stream are simply for the purpose of diverting and appropriating the water to beneficial uses. The question of the use of the waters of the stream is a matter with which, as I have said, the State alone may deal; the National Government has no power or control over it whatever—no right to legislate with respect to it; and certainly it has no right to impose a burden upon the corporation that must eventually be paid by the consumer, and thereby interfere directly with the use of the water by increasing the compensation necessary to be paid for it.

Let us consider just for a moment, Mr. President—for I am not going to take up much of the time of the Senate—the proposition submitted by the Senator from New York [Mr. Root], that the National Government has the right to promote navigation and to go to the extent of making a stream navigable that is not so already. If that be true, what becomes of the vested rights in the waters of the stream when the Government undertakes to pursue that course? Does the Senator from New York mean that the National Government may enter upon a stream of this kind, where all of the waters have been appropriated to a beneficial use, and destroy all of those rights and make it a navigable stream? Why, Mr. President, the right of one who has appropriated water from a stream and applied it to his land for the purpose of irrigation is a right that is just as sacred, just as tangible, as the ownership of his land.

Let us take a concrete case as illustrating what might be the effect of such an exercise of power. The Colorado River, that flows partly in this country and partly within the territory of the Mexican Government, is a navigable stream nominally; it has been recognized as such by treaties between the two nations. The waters of that stream have been appropriated under the laws of the State of California and applied to beneficial uses. There are hundreds of thousands of acres of land as fine and as fertile as can be found anywhere in the world that have been made so solely by the application of the waters of that stream to irrigation, thickly populated, and worth millions of dollars; yet, according to the doctrine of the Senator from New York, the National Government could enter upon the stream, so improve it as to make it actually navigable, and thereby destroy the rights of all of the people who are living upon those lands to-day. Do Senators believe that the National Government has any such right or power as that?

It may be, and for the purposes of this argument I am willing to concede it to be true, that the National Government would have the right to enter upon the stream and make it actually navigable; but when it does so it must make just compensation to every man who has acquired a water right in the stream. The National Government has no more right to interfere with the use of the waters of the stream than the State or its inhabitants have to interfere with the navigable quality of the stream. The two are absolutely separate and distinct; and the individuals in the State, or the State itself, notwithstanding the answer made by the Senator from New York, have a right to enter upon a navigable stream just as well as a nonnavigable stream and take out of it water for beneficial uses so long as the navigable quality of the stream is not interfered with. That

is being done all over the western part of the country. Of course, the Government has a perfect right to interfere with such diversion of the stream if it is apparent that it is interfering with navigation, but its right goes no further than that. If we keep these two rights of the National Government and of the States and their inhabitants separate and distinct, there is no reason why we should make any mistake with respect to this matter.

I have not the slightest objection to the provisions of this bill for the erection of a dam. If the Government wants it and the corporation wants it and the people of Connecticut are satisfied, it does not make any difference to me; but whenever the National Government adopts the policy of imposing a fixed charge upon a corporation for such use of a stream, then I protest because of the consequences that will follow from such action, as I have already pointed out.

Mr. President, I have had no intention of discussing the legal questions involved here, because they have been thoroughly and most exhaustively discussed by Senators who have preceded me. I only desired to point out, in a very brief way, the effects that it seems to me would follow from the provisions of this bill, and to give my reasons in a brief way for objecting to its passage. I know it is said that the people who are contending against this sort of thing are contending against the conservation of our natural resources. Well, I am not afraid of any criticism that may be passed upon me for trying to protect the people of my State from being deprived of the use of water, every drop of which, at least in the southern part of the State, is necessary for actual use in the development of that portion of the State which in part I represent in this body.

It is for these reasons, Mr. President, and for these alone, that I am objecting to the passage of the pending bill.

Mr. BORAH. Mr. President, I regard this bill as opening up in a very broad and general way not only the subjects which may be properly associated with the bill, but the general subject of the proper treatment of the natural resources of the country. There was published yesterday in the *CONGRESSIONAL RECORD* a statement from which I desire to take a single sentence:

Water power belongs to the people. The sites where it is produced should never be permitted to pass out of their hands, for only in this way can effective control be secured.

I agree with the statement that water power, in the proper sense, belongs to the people. I desire to discuss this matter in the light of that general proposition. Not only does the water-power question but the conservation question generally involve the proposition that our natural resources undeveloped in the proper sense belong to the people of this country. It is for the very reason that it seems to me the people's property is not being properly protected and their interest in it properly shielded that I desire to offer some criticisms of this bill.

Before taking up the bill proper, I am going to call attention, in a general way, but briefly, to the subject of conservation and to the proposition that we are wandering away from the rule that the resources belong to the people, and that we have reduced the conservation movement almost entirely to a revenue proposition. We are tending more and more to get all out of our resources possible in the way of revenue and less and less toward making these resources available to those of limited means.

As the conservation movement was inaugurated in the first instance very few people could find fault, and very few people did find fault, with the theory or the principles upon which it was organized. The original purpose of the movement was to protect our natural resources from waste and from monopoly, and certainly to that extent no right-thinking person could object to the policy or purpose of the movement. But in the practical application of those principles the people have either been lost sight of or by reason of the difficulty of applying the principles they have been ignored to such an extent that they are not getting the benefit of this conservation movement. Those who desire to see the natural resources of the country protected from the old system which at one time prevailed must necessarily find some practical means to apply these principles, or the conservation policy will break down of its own weight. Unless these natural resources can be made beneficial to the people generally, unless they are going to receive some benefit which is substantial in its import, a policy which is bound to be expensive will in the end fail of its own weight.

I see no reason why conservation should not work to the benefit of the people. In saying this I do not wish to be misunderstood. I do not desire to leave the inference that those responsible for the administration of our policy are knowingly or corruptly favoring a few to the injury of the many. I assert, however, that that is the effect in many instances of the



present policy. I do not believe that any considerable portion of the people of the West are opposed to the theory of conservation, and they are not opposed to an intelligent, practical application of the theory of conservation. The great majority of these people have a well-settled and most earnest desire to see the great natural resources of our country conserved—protected from waste and monopoly. But they believe that it is practicable and also indispensable to a permanent and successful policy of conservation that we not only withhold these resources from waste and monopoly, but that they should be utilized and dedicated to the benefit of the people.

The most important thing which we have to consider in regard to this matter is, first, whether or not the policy is being administered in such a way as to aid the people generally or to give them any benefit, and, second, if not, what changes should be made in order that they may have the benefit of these natural resources?

It will be said, I presume, that I am wandering far afield, for the reason that this bill in large measure relates to a local situation; but it is now pretty generally understood that it is the initiation of a policy with reference to these matters, and if I view this bill and the proposed contract under it correctly and have a proper conception of them, they are going to lead to a condition of affairs where the people generally, to whom it is said this property belongs, will have absolutely no protection whatever.

I do not for a moment question the good faith of those who advocate this measure with its peculiar addenda; but if we can demonstrate that they are putting a load upon the people's property which the people can not bear, in order to enjoy the property, we will certainly demonstrate that, even though it does belong to the people, we are not properly administering it; and if I, as I say, read this contract correctly or the bill and contract which has been made under it, so far as those to whom it is said the property belongs are concerned, they have no protection from what might prove so burdensome as to make the "people's property" worthless.

But before going into that, I am going to go a little further upon the general proposition of the conservation movement. I read from a speech delivered by President elect Wilson at Chicago a few days ago. It will not be charged that the President elect is embarrassed by the prejudices or the preconceived opinions which, it is stated, attach to people who come from the West and have come in contact with the conservation movement. It will not be said, either, that he is opposed to the conservation policy; and yet he has stated with searching accuracy the defect of the present conservation policy and has suggested the very thing for which we for a good while have been contending in vain. He says:

In the first place, we have to husband and administer the common resources of this country for the common benefit.

Now, not all business men in this country have devoted their thought to that object. They have devoted their thought very successfully to exploiting the resources of America, but very few business men have devoted their thought to husbanding the resources of America; and very few, indeed, have the attitude of those who administer a great trust in administering those natural resources. Until the business men of America make up their minds, both to husband and to administer as if for others, as well as for their own profit, the natural resources of this country some of the questions ahead of us will be immensely difficult of solution. It has come to be believed, and I repeat what is generally believed to be true is true, that the raw materials—the resources of the country as yet undeveloped—are not as available to the poor man who needs them most as to the rich man whose need is for raw material to exploit to his further gain.

Mr. President, in my judgment, that states the indictment accurately against the present trend of the conservation policy. It is removing farther and farther from the poor man or the man who needs them most these resources, or making it more difficult for him to receive any benefit whatever from them. The expense, the red tape, the procrastination, and the expenditures, not only upon the part of the man who desires to enjoy the resources, but upon the part of the Government, have raised such a barrier that a man of limited means can not now approach the natural resources of this country. Our forests, our timber, our coal, our power sites, and the other great natural resources of the country are being removed from all those who have not a vast amount of means to acquire them. Our agricultural lands and those things which have heretofore been supposed to be within the reach, or designed to be within the reach, of the man of most limited means have been placed practically beyond his reach. The great desire to secure revenue has overridden and come in contact with the desire to reach the man of limited means, and the former theory is prevailing.

These things are wrong. We must not try to say how justice must be meted out or how resources may be available, but we must see that they are equally available.

Some of our difficulties have arisen from the fact that we did not start with the correct premise. We must remember, and you must not cause people to believe otherwise, that reservation is not conservation.

Reservation is not conservation, where a national life grows as rapidly and as surely as American life grows, for mere reservation—which is a synonym for delay—and preservation, which is old-fashioned-ism, in the future are not true conservation.

It is said that the West, Mr. President, is opposed to conservation. I do not believe that 3 per cent of the people of the West are opposed to conservation; but we are opposed to reservation. Reservation withdraws and locks up. Conservation, when rightly understood, conserves those resources for the use and benefit of the people generally. Reservation must necessarily, I presume, to some extent precede conservation and to that extent is not to be opposed. But the fact is we have never gotten beyond the point of reservation. The proposition of making these resources available and useful and beneficial to all the people is true conservation, and that stage in the work we seem not yet to have reached. Our coal lands, our power sites, our agricultural lands to the extent of vast areas, our mineral lands, are all withdrawn, locked up, sealed, and delivered over to eternal night. How we shall unlock them without permitting them to be wasted and monopolized has not yet been determined. It is easy to withdraw these resources from use. It is far more difficult to provide the means by which to give the people the benefit of them after they are withdrawn. But we must determine how this shall be done or our whole plan will come to naught. Those who are opposed to any policy of conservation at all, who would go back to the old system, could have no better advocate of their cause than the incomplete, impracticable, theoretical, red tape, stifling, harassing system with which we are now burdened. I do not myself want to see the old system return. But I know that must be the result unless we insure the people some of the benefits which the people were promised in the beginning.

Now, as was said by the Senator from New York, and justly said, a great deal of credit is due to those who inaugurated this movement. It was necessary, in a certain way, to tie up the natural resources in order that they might be protected from the monopolists or those who were grabbing them upon a large scale; but now the time has come, and has been here for some time, when we must either find a policy of conservation which means practical application of its principles, or else, as I have said, this policy is going to break down of its own weight. I am going, briefly, to illustrate what I mean by beginning with our Forestry Service. Before I do so, however, I want to read another sentence from the President elect's address, because it states the other proposition with which we have to contend:

We must devise some process of general use; and why have we not done so? Why, if I am not very much mistaken, because the Government at Washington was tremendously suspicious of everybody who approached it for rights in the water powers and forest reserves and mineral reserves of the great western country which the Federal Government still controls.

Mr. President, the President elect there has stated three propositions which most succinctly state the objections which the western people have to the present method of administering our natural resources. First, that they are being removed from the man of limited means; secondly, that they are being administered upon the policy of reservation, a locking up; and thirdly, that the administration has been unduly controlled by a prejudice against those people who have approached the natural resources with a desire in good faith to utilize them. There was some justification for this suspicion, because there can be no question that before the conservation policy was inaugurated there was a grabbing of the natural resources. A great many things had been done which ought not to have been done; but it does seem to me that it is possible to secure an administration of this policy which will discriminate between the man who is doing wrong and the man who is doing right.

The difficulty at the present time is that the impediments, the embarrassments, and the difficulties are just as great and just as strong against the bona fide dealer as against the man who is charged with fraud. Take, for instance, our agricultural interests and our homesteaders—and I confess that they are much nearer to my heart in this matter than any other part of the people who are seeking to use these resources, because they are building up our country—the policy of the Government's agents is to go to the land office and throw a blanket contest over every proof that is offered by a homesteader. They either do not provide means or else they do not know of any means by which to give the man who is there in good faith and with limited means the benefit of his good faith and to impede the man who is there in bad faith; they do not have any rules and regulations which discriminate between the two. They simply offer a blanket protest, and the man of limited means, who is there in good faith, must go to the same expense,



suffer the same delay, endure the same hardships and the same adversity as the man who is a criminal and who is there for the purpose of stealing.

I am not mistaken as to the situation. Neither do I exaggerate it. I have the good fortune to live in that country. But that alone is not sufficient to give one accurate knowledge of the true situation. You must go out and see for yourself—you must visit the settlers and see their surroundings and the adverse conditions with which they contend. That for the last five years annually I have done. You must inquire for yourself as to the business interests which are seeking, many in good faith and some in bad faith, to develop these resources. You must look upon these rangelands for yourself and see how they are located. You must see these things in order to realize that this conservation policy has been wrenched wholly from its original purpose. I repeat, Mr. President, that in saying this I do not charge corrupt wrongdoing. But I do charge that suspicion, and prejudice, and procrastination, and red tape, and an utter lack of information gained at first hand have led to precisely the same result.

Mr. SMITH of Arizona. They make it as hard for one to get it as the other.

Mr. BORAH. Yes, Mr. President, we have an immense forest reserve in this country. When you come to measure it by the size of the old countries, it seems tremendous indeed. According to the report of the Forestry Bureau, filed this year, we have about 190,000,000 acres of forest reserves; that is, land which is in the forest reserves. The larger portion of this land has timber upon it. On page 33 of this report, the Forester says:

The national forests contain nearly 600,000,000,000 feet of merchantable timber. Nearly 350,000,000,000 feet are ripe for the ax and deteriorating in value, rapidly on areas swept by fire, gradually on areas where the forest is mature and the trees are slowly yielding to decay.

Nearly 350,000,000,000 feet of lumber, ripe and ready for the ax, ripe; and yet, under our present system, you can not purchase that ripe, ready to fall, and rotting timber any cheaper of the Government of the United States by reason of the fact that it is in a reserve than if it were owned and controlled by private companies, of whose prices the Government is complaining. The man of limited means or the man who desires to build a home can receive no possible benefit from the fact that the forest reserves have 350,000,000,000 feet of lumber that ought to be out of them, and which it would be greatly to the advantage of the forest reserves if it were out of them. In this connection I call attention to an editorial in the Saturday Evening Post, a paper which has been a supporter of conservation:

PHILADELPHIA, January 25, 1913.

#### SELLING GOVERNMENT TIMBER.

The Government's windmill battle against monopoly is admirably illustrated by its timber policy. Its own reports show a monopolistic situation with regard to standing timber.

An important part of the total supply, aside from that owned by the Government, is in few hands. A rise of more than 60 per cent in the price of lumber since 1897 indicates that owners of the commodity have had a leverage on the market.

Now, the Government itself owns one-fifth of all the standing timber in the country, many billion feet of which are ripe for the ax and even deteriorating from overripeness. In offering this ripe timber for sale the Government "makes a close estimate of the cost of manufacturing it into boards and of the market price of the product." It then fixed a minimum selling price, based on the two foregoing factors, which will "give a fair operating profit to the purchaser on his investment, but no more."

The words quoted are from the report of the Secretary of Agriculture. Obviously under this policy the Government's timber can never be sold on the market any cheaper than the monopolized timber in private hands is sold, because the Government's price is based on the market price; and the market price, of course, is fixed—or largely controlled—by private owners of timber.

If private owners boosted prices 50 per cent, the price of Government timber would automatically advance 50 per cent; and, though the public owns one-fifth of all the standing timber of the country, it can not get lumber any cheaper than private owners offer it.

Another effect of this policy is that the Government's ripe timber is not cut, but stands and decays. The "fair profit on his investment, but no more," which the Government offers to the timber operator, does not attract him, as is shown by the fact that it is selling only one-tenth of the timber it should sell to keep the forests in a healthy condition.

Having adopted a policy that in fact amply protects monopoly at every point, the Government then goes through a great rigmarole of restrictions and conditions designed to prevent its timber from falling into the hands of monopolists.

The whole thing beautifully illustrates our antimonopoly policy, which consists in putting a lot of words on paper and ignoring essential facts.

Why, Mr. President, it would be far better for the reserve if private individuals were invited to go in there and take out the ripe timber free of charge than to leave it there in its present condition.

I want to say, in passing, that I do not think the Chief Forester should bear the entire brunt of this situation. I realize the fact that in all probability, under the present laws and the present conditions, it would be very difficult for him to admin-

ister the law in a different way. But here are the facts stated by the Chief Forester; and they present to the Congress a condition with which the Congress must deal, or else, as I say, this forest-reserve policy will break down of its own weight, because it is benefiting no one. In addition to that, it is very expensive, costing the Government from five to five and one-half million dollars per annum.

A few days ago, while I was traveling upon a train from the West, a gentleman who is largely interested in timber in the West told me he trusted the forestry policy of the Government would not be changed. I asked why he thought there ought not to be any change. He told me that he had just purchased a sufficient amount of timber to run his sawmills for three years. He had been relieved of insurance, of buying the timber, and taking the chances of fire; the Government had kept it intact, had relieved him of insurance, and had sold it to him. I asked him if, by reason of that fact, he would be able to undersell his competitors in the market and the people would get the benefit of it. "Oh, no," he said; "certainly not. We fix the price before it reaches the retail dealer or the consumer."

Practically every foot of this timber, when it passes out in such an amount as in any way to affect the market, must pass through the hands of the people who are now in control of the market and fixing the price of lumber before it reaches the ultimate consumer. What are we going to do? Are we going to continue to hold these lands in reserve and pay out five and a half million dollars a year for administering the reserve, and still deprive the people of any possible benefit, putting them in the same relation to the timber organizations of the country as they have been before? If so, as I say, undoubtedly in time the people will get tired of that policy.

We do not desire to throw these timber lands out of the reserves. So far as the West is concerned, there is no considerable sentiment in favor of that course. Neither is there any considerable sentiment, so far as I know, at the present time and under present conditions, in favor of turning these timber lands over to the State. But one of those two things will in the end happen if the National Government can not get that 350,000,000,000 feet of ripe timber into the hands of the consumers of this country. We may have approached the proposition in such a way that nothing less than the Government operating its own sawmills and selling the lumber will do that, but it will have to be done in some way. If the department feels it can not work out a plan as the law is at present, then upon a report to that effect Congress must work out a plan which will permit the people to have this timber, which is now ripe for the ax and will soon fall and rot.

Taking up now this particular bill, I want to refer to the provision of the bill which first attracts my attention. It is found upon page 2:

And provided further, That the Secretary of War, as a part of the conditions and stipulations referred to in said act, may, in his discretion, impose a reasonable annual charge or return, to be paid by the said corporation or its assigns to the United States, the proceeds thereof to be used for the development of navigation on the Connecticut River and the waters connected therewith. In fixing such charge, if any, the Secretary of War shall take into consideration the existing rights and property of said corporation and the amounts spent and required to be spent by it in improving the navigation of said river, and no charge shall be imposed which shall be such as to deprive the said corporation of a reasonable return on the fair value of such dam and appurtenant works and property, allowing for the cost of construction, maintenance and renewal, and for depreciation charges.

Taking for the basis of our argument the premise that the hydroelectric power created at these power sites either belongs to the people or should be administered so that they may have the benefit of it, let us analyze this bill so far as the people's interests are concerned. Where is there any power or tribunal here created or erected to be interposed between this corporation and any charge it sees fit to put upon the consumers of power?

Mr. WORKS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from California?

Mr. BORAH. I do.

Mr. WORKS. Does the Senator from Idaho believe that the Government could provide any body or commission that could do that thing?

Mr. BORAH. If I understand correctly, this power is transmitted across State lines.

Mr. WORKS. It could do it, then, only because it is interstate?

Mr. BORAH. I understand that this power is transmitted through two or three States. If that is so, I have no doubt but that when it comes to transmit hydroelectric power, the corporation doing so would be subject to the regulation, for instance, of the Interstate Commerce Commission, if we should see fit to place it under the jurisdiction of that body. But I agree



with what I think is in the mind of the Senator—that if it is intrastate development and use, the National Government would not have anything to do with it.

Mr. WORKS. That was exactly my view of the matter. I had overlooked the fact that the power could be transmitted into another State.

Mr. BORAH. Upon that somewhat inoffensive and modest-appearing provision of the bill, Mr. President, there is already being built up what one would naturally anticipate would come, but not quite so quickly. Here is the contract which has been formulated in contemplation of Congress passing this bill; and keep in mind that this is the people's property.

Mr. THOMAS. Does the Senator say that this contract has already been entered into?

Mr. BORAH. I understand so.

Mr. CLARK of Wyoming. Well, no; this is an agreement already entered into between the company and the Secretary of War setting forth what will be the contract if this bill passes.

Mr. BORAH. Yes; technically, that is true. I read from the agreement the following:

From the gross receipts of the company for the water power produced by it there shall be deducted as operating expenses the following costs:

(a) The amount of all regular or annual taxation paid to any Federal, State, or local authority.

(b) An amount not to exceed \$48,000 per year, which is to be fixed by agreement between the Chief of Engineers and the company as a reasonable rate for depreciation on its plant and machinery.

You will notice as I proceed what a tender and sensitive regard they have, all the way through, expressed for the people. How the consumer is conspicuous by his absence:

(c) The actual and bona fide cost of all labor, material, supplies, and other expenses of maintenance and operation, excluding depreciation. Such cost of operation shall be taken to the initial points of distribution, to be fixed subject to the approval of the Chief of Engineers.

Of the net profits of the company as thus ascertained the company shall be entitled to all of the said profits up to an amount equivalent to 8 per cent of the actual amount of capital invested as provided in section 1 of this memorandum.

The company is taken care of upon all its investment to the extent of 8 per cent—a pretty fair percentage:

The said net profits beyond 8 per cent and not exceeding 9 per cent shall be divided between the United States and the company equally. The net profits beyond 9 per cent shall be divided between the company and the United States at ratios and in manner to be provided in the above-mentioned permit and agreement, but in no event is the share of the United States to be less than 50 per cent of such excess profits.

The United States enters into a copartnership with this corporation, by which the United States and the corporation divide the profits. The United States and the corporation are both desirous of taking out of it all the possible profit that it will produce. The charge is fixed indirectly by a tribunal, which is interested in raising the rate as high as it can—that is, interested in seeing the profits increase.

It is a pure business proposition, between the National Government and the corporation, of fixing the freight, and "Jones pays the freight." What means of subsistence or of profit has this corporation other than that which it gets from the people who use the power created? What profits are going to flow into its exchequer except the profits which are derived from the masses of the people who surround or live in that community? Whose profits are they dividing here?

You would understand from the argument which has been made here that there is somebody here to be taxed, aside from the people themselves, and that it is a righteous thing to proceed to tax the institution to its full limit. But, as said by the Senator from California [Mr. WORKS], the great weight of this must inevitably be paid by those who use the power. Does the Senator from Connecticut know of any means or resource by which to increase the profits of this company other than that which will come from the use of the power which it will generate?

I read further from this agreement:

These terms are imposed, in view of all the conditions and circumstances on the Connecticut River affecting this particular project, as being fair and just to both parties.

Both parties! That is, the corporation and the United States.

Mr. WORKS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from California?

Mr. BORAH. I do.

Mr. WORKS. This bill provides that the money realized by the Government shall be applied to the improvement of navigation upon this stream. The effect of that is that the consumers of power furnished by this corporation alone contribute the money to improve the navigation of the stream.

Mr. BORAH. Yes; that part of it which ever gets to the stream.

Mr. BRANDEGEE. Where does the money come from that is taken out of the Treasury now and spent in improving the navigability of navigable streams?

Mr. BORAH. It comes from all the people of the United States. Raised by general taxation. I conceive that there is a vast difference between imposing a special tax upon a part of the people for dredging a stream for everybody's use and in raising money by general taxation for dredging a stream which all may use.

In one breath we are told that these resources belong to the people and are the people's property. In the next we are presented with a plan which taxes them and burdens them in every conceivable way. We must be taxing the people's property and the people will have to pay the taxes. In the matter of public utilities, if we are seeking to serve the people, we should make the cost and expenditures in the matter of development as small as possible, and then fix the rate to be charged the people upon the basis of the cost and expenditure. The higher the cost, the higher the expenditure, the higher will be the toll, necessarily. If you sell these natural resources at exorbitant prices and fix the tolls upon that theory, as you will have to, then the toll in the end simply pays the price originally charged. If we burden these resources with tolls to dredge the streams of the country it is certain that it means an extra burden to the ultimate consumer. These general expenses, such as the improvement of navigable streams, should be borne by general taxation while the special taxes should be made as light as possible in order to give the people at large as cheap a service as possible.

Mr. BRANDEGEE. Why, of course; and this money that is going to be spent on the Connecticut River will come from the people of Connecticut.

Mr. BORAH. That is, it would come from the people who use the power from this particular plant.

Mr. BRANDEGEE. Precisely.

Mr. BORAH. The other people would not bear any portion of the tax.

Mr. BRANDEGEE. Just as the money spent on the general improvement of navigation comes from those who pay the taxes on the things they consume.

Mr. BORAH. Mr. President, if the Senator from Connecticut wants the consumers of power in the State of Connecticut to dredge his rivers, of course I am not going to quarrel with him about that. But when I look at the history of the rivers and harbors bills for the last few years in the United States Congress, and particularly when I read the article by the Senator from Ohio [Mr. BURTON] in the last number of *The World's Work* upon the extravagance and the waste which is connected with the dredging of these rivers, I do not want the people in my part of the country to have to pay it by means of a special tax. It is bad enough when they pay it as a general tax.

I was saying that this is the people's property. So says this article. What are we doing with reference to the management of the people's property?

In the first place, we are putting it just as far away from the people as it is possible to get it under our form of government. We put it under the control and regulation of an officer whom the people do not elect, whom they can not discharge, from whose judgment there is no appeal, and in whose presence the people are very seldom permitted to stand.

Let us take a case a little nearer home. Suppose the Government should build a dam across what is known as the Snake River, in Idaho. Some time I expect to see every farmer in the Snake River Valley lighting and heating his home by means of electricity. I expect to see it take the place of coal and fuel and to supply those things which are conceded to be growing scarcer and dearer every year. We will assume that the Government has built a dam and made a contract such as this, and that the Secretary of War is about to fix a charge upon the corporation which ultimately will have to be paid by these people. What opportunity is there for them to be heard? What chance have they to submit any showing so that they may be indirectly protected, if not directly?

I do not understand why it is necessary to remove that matter from the tribunals which we have created for the purpose of fixing rates, where the people can be heard, where their rights can be determined according in some measure to judicial rules and regulations, and place it in the hands of an executive officer from whose judgment or decision there is no appeal and with whose original action the people have absolutely nothing to do.

I think those who say the bill ought to pass with this provision in it, and who still say that this is the people's property, have lost sight of the fact that there is no provision whatever in the bill to protect the people to whom the property belongs.

I noticed this morning in a newspaper published somewhere in the State of Massachusetts the statement that "Senator



BORAH was not progressive on the subject of power sites," and that he was "a reactionary upon that question." There is some consolation in the fact that this measure, which is characterized as a progressive measure, has been the means of bringing together again the Republican Party, because I find the leading progressive from New York [Mr. Root], and the leading progressive from Connecticut [Mr. Brandegee], and the President of the United States, and Mr. Pinchot, and Mr. Garfield, and Mr. William Draper Lewis all combined in supporting this progressive measure. While I should dislike very much to see the bill become a law, if it carries with it the possibility of bringing together all these pronounced progressives it will have some benefit to distribute to the people of the country even if they do not get any cheaper light. But in view of this combination I am led to examine it for myself, and I conclude that it is not progressive to levy all extra taxes possible upon the "people's property" and to place it under the control of an officer whom the people do not elect.

Mr. President, I have offered here an amendment which provides that all corporations engaged in transmitting hydroelectric power and electricity from one State to another, or from a Territory to a State, or from the District of Columbia to a State, or to a foreign country shall be subject to the provisions of the interstate-commerce act. I offer that amendment for the reason that I do not myself desire that these power sites shall pass beyond public regulation and control. I do not desire to place them beyond the reach of the public in the matter of fixing charges and rates. I do not see why it would not be a perfectly feasible proposition to place them under the control of the rate-fixing body which has been created by the Government. If that should be done, Mr. President, at least this would be accomplished—we would have a tribunal whose sole object would be to fix a reasonable rate, taking into consideration the corporation and the public, and not a tribunal whose sole interest would be to secure profits and revenue. In addition to that, we would have an opportunity to submit evidence and to have a hearing, the same as we do with reference to the fixing of rates upon other commodities that are transmitted from one State to another.

I have offered a second amendment, Mr. President, which I want to discuss for a few moments, although I think perhaps I shall have some difficulty in satisfying some Members of the Senate that it is germane to this proposition. It is germane only in the sense that, as I said a while ago, this is the beginning of a policy with reference to these matters.

Under the reclamation law a number of dams have been built throughout the western country with the object of diverting water for the purpose of reclaiming the arid lands of the West. Those dams have been constructed by the Government, and they are charged up, as it were, to the settlers upon the land. When the settlers come to pay for the expense of putting the water upon the land they not only pay for the canals and the ditches, but they pay for these dams, and also for the reservoir expenses.

In the reclamation law we find this provision:

The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably.

Under that provision the expenses of these dams are charged up to the settler. The act further says:

*Provided*, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

It will be seen, therefore, that while these construction works are charged up in the price which the settler pays, the title to them remains in the Government. The Government in some instances is now creating hydro-electric power, electricity, and selling it back to the same people who have paid for the construction of the dam.

I maintain, Mr. President, that if we are going to adopt the policy of putting these power sites and the proceeds from them under the control of the Government and giving over to the Government the benefit of them, it is but fair that the settlers should be relieved of the cost of building these dams. In time the settlers would repay for them in the power charges they would pay to the Government. I have, therefore, introduced an amendment providing that the charge for the construction of these dams shall be eliminated from the charges made to the settlers upon these lands.

One of two things ought to be true: Either the title to these dams should pass over to the settlers who have paid for them, and they should have the benefit of any proceeds arising from the use of the power; or else, if the proceeds from the use of power are to pass to another person, they ought to be relieved from the payment for these dams.

As I say, I know it will be said that it is far-fetched to attach this amendment to a bill providing for the construction of a dam in Connecticut. But, as I say, in view of the policy which is being created, and in view of the fact that we are building up this policy, not by a general bill, not by a bill which takes in the entire country, but step by step, by means of bills relating to a locality, it is necessary, if we are to work out a general policy and a general system which will pertain to the entire country, to insert these different amendments in bills which are ostensibly local in their character.

I had intended to discuss the legal phase of this controversy, but since listening to the Senator from Colorado [Mr. Thomas] upon that subject, I feel that I should be wholly trespassing upon the time of the Senate if I should undertake to do inadequately what he has done so well. I shall not therefore enter upon that phase of the discussion.

Mr. TOWNSEND. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Michigan?

Mr. BORAH. I do.

Mr. TOWNSEND. I have listened a great many times to the suggestions of the Senator from Idaho in reference to the control and management of our national resources, especially those relating to forest reservations. I should like to ask, for information, whether the Senator from Idaho has ever prepared and presented to the Senate any bill embodying his ideas of how our water powers and our forest reservations should be administered?

Mr. BORAH. Yes; I have prepared some bills, and have been fortunate enough to get some of them through—the three-year homestead bill and others. So far as the Forestry Service is concerned, I will say to the Senator from Michigan that, while we have formulated no general bill, at the last session of Congress, I believe, a bill passed Congress providing for the sale of the timber upon all of these lands which had been burned over, and providing for the sale upon the part of the homesteader himself of the timber upon the land upon which he had filed.

Mr. TOWNSEND. I remember that bill.

Mr. BORAH. While it was not a general bill, it was in the direction of appropriating a part of this timber, which is confessedly going to waste, to the immediate benefit of the settlers, and if it had been sold in pursuance of the bill it would have been to the immediate benefit of a great many people, because they would have purchased the timber under the bill undoubtedly to their advantage.

That is one of the things of which we complain. That bill passed Congress and it was vetoed, as the President said, upon the recommendation of the Secretary of the Interior. And why? It was vetoed because it was feared that the homesteader would get pay for his timber and might not thereafter acquire title to his land. With 350,000,000 feet of timber ripe and ready to be harvested the bill was vetoed for the reason that some man might get \$100 worth of timber and thereafter abandon his land.

The discouragement in the small effort to relieve the situation has been sufficient to deter me in undertaking anything greater.

Since the Senator has referred to what the Senator from Idaho has attempted to do, I had the honor to join in the preparation and the urging here upon the floor of the Senate of an amendment which would take out of these various reserves the agricultural lands and permit settlers to enter and use the agricultural lands. That was defeated for the reason they said that it had a tendency to break the integrity and destroy the wholeness of the forest reserves, and was, they undertook to satisfy the public, a raid upon the whole conservation policy.

Mr. President, I do not suppose that within my lifetime or yours the West will ever be able to convince the good people of the East that we do not desire to have the forests of this country turned over to the grafter. The West has never asked, and does not now ask, that the old system of grabbing and waste be restored. And the West pays its tribute of respect to those who initiated the movement which prevented that. But it does hope that in time it will come to be understood that there must be a different policy and a different spirit of administration.

For the last few years every time a man would raise his voice against the effects of this manner of administration, against the impractical and shortsighted policy of driving out settlers and retarding legitimate growth, he has been assailed as an opponent of conservation. This cry will be raised again. Any effort to do justice to the settlers, to give them an intelligent, discriminating administration of the public-land laws, any effort to introduce a practical application of the real principles of conservation or to give the West an opportunity to develop along legitimate lines—any effort to give these natural

resources to the people, relieved of heavy taxes, tolls, and bureau red tape, will be characterized by some as enmity to conservation.

When we come here with the most modest appeal and the most modest proposition to relieve the situation the press of the country is immediately saturated with the idea that there is a powerful conspiracy to break down the forestry policy. I do not know of a single instance in which the West has ever asked for anything which could in good faith be interpreted as an attack upon the forestry policy—that is, in its general conception and purpose. We want, if we can, as the President elect said, to remove, if possible, all suspicion which rests upon us every time we approach it.

I said upon the floor of the Senate, and I repeat, that the vetoing of that burnt-timber bill was an indication that there was no possible relief to be granted.

So far as the power-site proposition is concerned, I say to the Senator that I have not prepared any bill upon the subject; but I have indicated by amendments to this bill, with reference to the proposition of transmitting power across State lines, how in my judgment it should be regulated and controlled. I have no pride of opinion and no pride of authorship over that proposition. I am perfectly willing to accept any man's theory or any man's policy which will give a system of regulation and control which will take into consideration the interests and the welfare of the people for whom we are fixing these rates. I am utterly opposed—and I do not propose to consent to it under any circumstances, if I can help it—to a system which will fasten upon this property the great burden of dredging the rivers and put the control of the compensation up to a tribunal whose prime object is to secure as much money as possible.

I believe that answers the Senator from Michigan.

Mr. GALLINGER. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from New Hampshire?

Mr. BORAH. I do.

Mr. GALLINGER. I notice the Senator suggested that he was not quite sure that one of his proposed amendments would be germane to this bill. The Senator need not trouble himself about that, because we have no rule in the matter of amendments being germane, except one relating to appropriation bills. In this body, under our liberal rules, I think almost anything is germane to any bill that may be under consideration.

But I rose to ask the Senator this question: Some of us gave our very warm support to the irrigation legislation because of the fact that we were assured that the Government would have returned to us every dollar which was expended in that great project. I will ask the Senator if the dams that he says now ought to be passed over to the settlers instead of being in the hands of the Government are not a necessary and an inevitable part of the money that the Government expends to carry on this work? I do not see how the Senator differentiates between that expenditure and the digging of ditches or anything else connected with this great project.

So far as the Government selling the power is concerned, I am not very clear about that, because I have not examined it, but, after all, it seems to me that if the Government has fulfilled its contract with the settlers and has expended the money and they are to pay back every dollar, as the Senator from Idaho assured us they would and as I understand they are doing, I do not see why we should take out a portion of the expenditure that the Government has been to and differentiate that from the other expenditures which have been made.

Mr. BORAH. Mr. President, I am obliged to the Senator from New Hampshire for his suggestion about the amendment being germane. Of course, I understood that parliamentarily it was not necessary to be germane, but I was arguing from a logical view as to whether the Senate would be willing to take up such a subject in connection with this bill from the broad standpoint that it is fairly relative to the subject.

Mr. GALLINGER. The Senator from Idaho is perhaps aware of the fact that Congress once attached a land bill of very considerable proportions to a private pension bill, and it so appears on the statute books to-day. In this body I think the question as to whether an amendment is germane or not relates only to appropriation bills. I think the Senator will find that to be the case.

Mr. BORAH. That is unquestionably true.

Mr. BRANDEGEE. The Senate placed a meat-inspection bill on an agricultural appropriation bill.

Mr. BORAH. I know. I am aware the Senate will do all these things when it gets ready.

As to the other proposition which is suggested by the Senator from New Hampshire, of course I was not here when the reclamation act was passed. I understand that there were some

assurances upon the part of western Senators that the settlers should pay back all the expenditures. I am not going to enter into a discussion as to whether there is any moral obligation upon succeeding legislators to regard a mere oral statement in debate or not. I will assume for the sake of the argument that we ought to regard it at present. But, Mr. President, these dams, and so forth, are not turned over to the settlers. The title is retained in the Government, and the Government in time will have a property of great value from which it will be again collecting revenue from the same settlers who paid for its construction.

Mr. GALLINGER. But, Mr. President, if the Senator will permit me, I will ask him if, when the Government supplied the water to irrigate the land of the settlers, did not the Government fulfill absolutely all that it had promised to do in the legislation?

Mr. BORAH. You mean in the law itself?

Mr. GALLINGER. In the law itself.

Mr. BORAH. The Government undoubtedly fulfilled the law, but it has retained, as I said, the title to these dams. The settlers did not contract with the Government that it should create power and sell that power back to the settlers. That is a thing aside. It is not covered by any debate which took place here. It is not covered by any provision of the law. It is not covered by any contract.

If the Government sees fit to retain this title and to put the property to such use as that an extra burden is thereby imposed upon the settler, it seems to me that one of two things must be true. Either the settler is entitled to the proceeds, to apply it upon the land, because he has built the dam, or else, if the Government is going to retain it, it ought to take the responsibility of the cost of construction.

The power developed in these dams will in time pay for the dams and in time pay for them again. Yet the community will be paying each time, as it consumes the power for the construction of the dams. I would just as soon have the Government turn over the dams to the settlers, transfer them absolutely, and let them run them, and if there is any power to be manufactured let them have the benefit of it. But the Government does not propose to do that. It has discovered the necessity of holding them in order that this property which is created by the construction of the dam may be used to the advantage of the Government.

Mr. CLARK of Wyoming. Will the Senator right on that point permit an interruption?

Mr. BORAH. Certainly.

Mr. CLARK of Wyoming. Is it not a fact that corporations engage, under another general irrigation law passed by the Congress of the United States, in the construction of great works, and after they have been repaid for that construction, when the land under the construction has been developed, does not the corporation then go out of business and turn over the works to the settlers for their operation? I refer to the operations under the Carey Act.

Mr. BORAH. Yes; I think that is true; but that is not under the reclamation law.

Mr. CLARK of Wyoming. It is not under the reclamation act, but under an act of Congress.

Mr. BORAH. I want here to call the attention of the Senator from Michigan to a letter which I intended to refer to in my original remarks. I read it in answer to the inquiry which he made. This is a letter written to me from Sumpter, Oreg., only a few days ago. The writer says:

In the forest reserve along the rivers and creeks of eastern Oregon there are thousands of acres of flat bottom and bench land of the very best soil and where water can be gotten on every foot of it for irrigation.

This land can not be taken up by the many who would like to settle on it for homes, because there are a few trees on it.

All open spaces along the creeks which could be taken up by the settlers are reserved as ranger stations to keep out the settlers. In Baker and Grant Counties there are 83 of these stations, embracing over 10,000 acres.

I suggest to the Senator from Michigan, what possible use could the Government have for 83 ranger stations in two counties? What possible advantage can the Government gain by it, so far as properly administering the reserves is concerned? The secret of that is that under the act of 1906 settlers would have a right to go in there and make applications for these agricultural lands, and if they were agricultural they would have a right under the law, if it was administered properly, to acquire title to them. But there was an exception to the law, and that was that if the lands were needed for governmental purposes the Government would have the right to retain them in spite of the other provisions of the law. So, wherever there is an agricultural area which a settler might utilize to



his advantage, in order to prevent its being entered by a bona fide settler they have established thereon a ranger station.

I think everyone will agree with me that that is not conservation. It is no part of conservation. It is what the President elect called reservation. It is impeding the settlement of our country. It is that class of administration, Mr. President, from which I ask relief, and nothing else.

If anyone shall go into the northern part of the State which I have the honor in part to represent, he will find scattered all through those reserves these ranger stations. Some of them are upon lands which had originally been entered by the settler. Some of them are upon lands which had not been entered, but undoubtedly would have been entered. In that way the law is so administered as to turn our settlers from our own lands into the lands of Canada. We have, as the statistics of the country will show, lost at the rate of 100,000 citizens each and every year for the last five years, who have gone over into Canada, and expatriated themselves, taking the oath of allegiance to another country, in order to get land, when there were lands at home which they desired but could not get.

Give the West, Mr. President, a bona fide administration of the forestry policy, give them a bona fide and fair administration of the conservation policy, give them an opportunity to send the honest settler to the agricultural land and the honest business man to the natural resources to develop them in a legitimate way, so that the benefit will flow to the masses of the people, and you will never hear a word of complaint from the western people in regard to this conservation policy.

As to power sites, I presume we are all agreed as to the great necessity of holding them under public regulation and control. Few men having regard for the public interest would want for a moment to see them turned over without retaining any direction or control for the benefit of the public. In fact, these power sites constitute a public utility and must necessarily be regulated and controlled by the public in the public interest. If there is any instrumentality coming from nature's generous hand which seems peculiarly to belong to the people and peculiarly adapted to be a servant of the people it is hydroelectric power. But I do not propose myself to be stampeded into an ill-considered, half-hatched scheme which, while ostensibly dedicating these natural resources to the people, is simply burdening them for their use, so that they will have to bear the burden. The true purpose in regard to this matter should be to give the people a cheap service, but the present movement is in the direction of giving them an expensive and burdensome service. No effort, not a single step is being taken to see that the people get cheaper power, cheaper light, cheaper heat, cheaper cooking facilities. But while feigning our desire to serve the people we are in fact preparing to tax them in another form and another more insidious way. If Congress can find a way to levy a new tax, it deliriously hastens to the pleasure. If it can accentuate or accelerate extravagance the ecstasy which accompanies its work is difficult to describe. The people are deriving no benefit from our forest reserves. Although billions of feet of lumber are ripening and rotting year by year they are paying the same prices and watching the rise of prices the same now as before these forests were reserved. Under our proposed power plan they will be in precisely the same position with reference to these great natural resources. The scheme is to tax these powers in every way possible, and everyone must know that this charge will all be paid by the people who use the power, the ultimate consumer.

Mr. BRANDEGEE. Mr. President, I did not hear, at least if I did I do not recall, the provision in the amendment which the Senator said he was going to propose, subjecting this company to the Interstate Commerce Commission. If I recall it, it declares the company to be a common carrier, does it not?

Mr. BORAH. Yes, sir.

Mr. BRANDEGEE. What I was going to ask the Senator is in what respect would the duties or obligations of this public-service corporation be changed by its being declared to be a common carrier? I ask for information. I did not see the legal effect of it; that is all.

Mr. BORAH. In what respect would it change it?

Mr. BRANDEGEE. Would its duties be changed by being a common carrier?

Mr. BORAH. I do not know that its duties would be changed as a corporation, but our relations to it is solely for the purpose in that amendment to fix rates.

Mr. BRANDEGEE. The Senator's idea in declaring it to be a common carrier is not to affect any of its obligations, but for the purpose of bringing it under the control of the Interstate Commerce Commission.

Mr. BORAH. Precisely.

Mr. BRANDEGEE. That is all?

Mr. BORAH. Yes, sir.

Mr. SMITH of Arizona. Mr. President, it had been my purpose to go into a somewhat lengthy discussion of the pending bill, but the ground was so well covered by the Senator from Colorado [Mr. THOMAS] and by a speech formerly made, that is now before the Senate, by the Senator from Idaho [Mr. BORAH], who has just given up the floor, that I feel on this particular bill the question has been more fully and better discussed than I could do it. I therefore will postpone to some other time what I have to say on the general question of the conservation of the West, and to express, as far as I can, my objection to the principle involved in the bill before the Senate.

I will say, however, to the Senator from Connecticut that the Senator from Alabama [Mr. BANKHEAD] apprehended, and I use the word advisedly, that I would probably hold the floor for several hours, and he did not expect a vote on the bill this evening. He is now in the Committee on Commerce, and if that Senator is called to the Chamber and acquainted with the fact, I shall not attempt a discussion of the bill at this time.

Mr. JONES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ASHURST in the chair). The Senator from Washington suggests the absence of a quorum, and the Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Fletcher	McCumber	Sutherland
Bacon	Foster	McLean	Swanson
Borah	Gallinger	Martine, N. J.	Thomas
Brady	Gamble	Oliver	Thornton
Brandegee	Gardner	Overman	Townsend
Bristow	Gore	Page	Warren
Bryan	Gronna	Paynter	Watson
Chamberlain	Johnson, Me.	Perkins	Webb
Clark, Wyo.	Johnston, Ala.	Poinexter	Wetmore
Clarke, Ark.	Jones	Pomerene	Williams
Cummins	Kenyon	Richardson	Works
Dillingham	Kern	Sheppard	
du Pont	La Follette	Smith, Ariz.	

The PRESIDING OFFICER. Fifty Senators have answered to their names, and a quorum of the Senate is present.

Mr. BRANDEGEE. Mr. President, there are two or three Senators who have told me that they desire to address the Senate briefly on this bill. One of them is here and is now ready to proceed, and two others are absent on committee work and can be here at any time. Besides those Senators, I know of no other Senators who desire to speak upon the bill, except that I shall want, perhaps, five minutes myself. In view of that, and in order to get the sense of the Senate, I ask unanimous consent that the vote on the bill be taken under the unanimous-consent agreement which exists, to-morrow, not later than 4 o'clock.

The PRESIDING OFFICER. The Senator from Connecticut asks unanimous consent that the vote upon the pending bill be taken to-morrow, not later than 4 o'clock.

Mr. GALLINGER. And on the amendments.

Mr. BRANDEGEE. Mr. President, the reason I stated the request in that way was because the unanimous-consent agreement, as it stands, to vote upon the legislative day of Tuesday, includes all amendments and the bill itself to final disposition, so that I have simply asked that the vote shall be taken under the unanimous-consent agreement on the calendar day of to-morrow, Friday, not later than 4 o'clock in the afternoon.

Mr. CLARK of Wyoming. Mr. President, I merely want to make a parliamentary inquiry of the Senator from Connecticut, which is, whether or not that would be a change or modification of the unanimous-consent agreement we have already entered into; and, if so, whether the unanimous consent which he now asks should be granted? I am not urging the suggestion, for I should like to see a vote on the bill as soon as possible, but I am putting the question in view of the precedent it might establish as to the violation of the terms of a unanimous-consent agreement.

Mr. BRANDEGEE. That question has been raised before, and I can only answer the Senator from Wyoming that in my opinion it would not. It would be a unanimous-consent agreement within a unanimous-consent agreement, in my opinion, and not at all in conflict with it. The unanimous-consent agreement as it stands is that we shall vote on the legislative day, which simply means that instead of adjourning we will take recesses, and that nothing else can be done in the way of business until we shall vote.

Mr. GALLINGER. And the Senate has agreed—

Mr. CLARK of Wyoming. Mr. President, it seems to me—

The PRESIDING OFFICER. To whom does the Senator from Connecticut yield?

Mr. BRANDEGEE. I yield the floor.

Mr. CLARK of Wyoming. Mr. President, it seems to me that this proposed unanimous-consent agreement would change the unanimous-consent agreement that we have heretofore entered into. Under the unanimous-consent agreement heretofore entered into the discussion could proceed for a week.

Mr. BRANDEGEE. Yes, it could; but if the Senate is done talking about the matter it is not necessary that the discussion should go on forever.

Mr. CLARK of Wyoming. No; that is true; but the effect of the unanimous-consent agreement which we entered into was that we agreed not to fix a limit for debate.

Mr. BRANDEGEE. I do not regard it so, Mr. President. If we had entered into a unanimous-consent agreement that we would vote upon the matter on the calendar day of to-morrow, and Senators had debated the subject to their hearts' content, and some Senator asked unanimous consent that the vote be taken at 4 o'clock, that would be another unanimous-consent agreement; but it would not be inconsistent with the first one, in my opinion. I know there is a difference of opinion about it.

Mr. CLARK of Wyoming. I am not seeking to dispute it. I am simply suggesting the matter to the Senator as it occurs to me.

Mr. GALLINGER. Mr. President, on at least one former occasion we did precisely what the Senator from Connecticut [Mr. BRANDEGEE] now asks, and I quite agree with the Senator from Connecticut that his present request, if granted, would not be a violation of the unanimous-consent agreement. So I hope the Senator's request will be granted.

The PRESIDING OFFICER. Is there objection?

Mr. JONES. Mr. President, if it is the understanding that the vote will not be taken to-day, I shall not object.

Mr. BRANDEGEE. I had assumed that a vote would not be taken, because there are three speeches which I know of yet to be made, and we probably shall not sit more than an hour longer this afternoon.

The PRESIDING OFFICER. The Secretary will read the request for unanimous consent submitted by the Senator from Connecticut.

Mr. BRANDEGEE. I did not submit the request in writing, Mr. President, but I can restate it. I ask unanimous consent that the vote be taken, in accordance with the existing unanimous-consent agreement in relation to this bill, to-morrow, Friday, not later than 4 o'clock in the afternoon.

The PRESIDING OFFICER. Is there objection to the request for unanimous consent as stated by the Senator from Connecticut?

Mr. JONES. Mr. President, I understand that notice has been given that appropriation bills are to be taken up to-morrow.

Mr. BRANDEGEE. That notice will stand for what it is worth. The existing unanimous-consent agreement is subject to appropriation bills; but I assume that the Senator who gave the notice that he would ask to have the Army appropriation bill taken up to-morrow, if the Senate should agree unanimously to vote not later than 4 o'clock to-morrow on the pending measure, would rather have it out of the way so that morning business may be transacted hereafter.

Mr. JONES. While it is true that the existing unanimous-consent agreement is subject to the consideration of appropriation bills, yet there is no limitation upon the time when the vote shall be taken.

Mr. BRANDEGEE. It would be possible that the whole of to-morrow might be spent upon the Army appropriation bill if the Senate wants to take it up; but if we can come to an agreement to vote on the pending bill to-morrow, I assume the Senator who has the matter in charge would not press the appropriation bill.

Mr. WARREN. Mr. President, in my judgment an appropriation bill will be taken up in the morning to-morrow after routine business, but I assume—

Mr. BRANDEGEE. There is now no routine morning business.

Mr. WARREN. I understood that the Senator proposed to arrange for a vote to-morrow and to have that vote on the calendar day and not on the legislative day.

Mr. BRANDEGEE. That is the proposition.

Mr. WARREN. But if we proceed along the line we are now proceeding, certainly the appropriation bills are in order and could be taken up and proceeded with.

Mr. BRANDEGEE. In order; yes.

Mr. WARREN. But I imagine there will be no difficulty about ceasing their consideration in time to take this suggested vote, if we decide upon it. I think, however, the Army appropriation bill will be taken up and proceeded with for a time, at least, and perhaps finished.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Connecticut?

Mr. BANKHEAD. Mr. President, I should like to have the proposed agreement stated, so that I may know exactly what it is.

The PRESIDING OFFICER. The request for unanimous consent was not reduced to writing, but the Chair will attempt to state it. The Senator from Connecticut [Mr. BRANDEGEE] has asked unanimous consent that to-morrow, not later than 4 o'clock in the afternoon, the Senate will vote upon the pending bill.

Mr. BANKHEAD. And amendments?

The PRESIDING OFFICER. And amendments thereto submitted.

Mr. BANKHEAD. Well, Mr. President, so far as I am individually concerned, that arrangement would suit me; but there are several Senators who desire to be heard on the bill, among them the chairman of the Commerce Committee [Mr. NELSON], who has not had an opportunity to speak upon the bill because of the fact that he has been attempting to perfect the river and harbor bill, on which his committee is now in session. Under these circumstances I shall be compelled to object.

Mr. WORKS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from California?

Mr. BRANDEGEE. I do.

Mr. WORKS. The only difficulty I see about the matter is that, if the appropriation bill should be taken up to-morrow, it will practically end discussion of the pending bill.

Mr. BRANDEGEE. I will say to the Senator from California that objection has already been made.

Mr. WORKS. I did not intend to object. I only wanted to call attention to the situation.

The PRESIDING OFFICER. Objection has been made.

Mr. BRANDEGEE. I will inquire, Mr. President, of the Secretary whether there is anything on the calendar for Monday in the way of a unanimous-consent agreement?

Mr. MARTINE of New Jersey. Mr. President—

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from New Jersey?

Mr. BRANDEGEE. Before we leave this particular matter will the Senator from New Jersey allow me a moment to ask the Senator from Alabama [Mr. BANKHEAD] whether he would feel constrained to object in behalf of absent Senators to the same request if made for next Monday?

Mr. BANKHEAD. Mr. President, I will suggest to the Senator from Connecticut that he can make that suggestion to-morrow morning just as well as now. I have no disposition to delay the vote, so far as I am concerned, but have objected only for the reason I have stated.

Mr. BRANDEGEE. I understand perfectly well. Then I will state that to-morrow, upon the meeting of the Senate, I shall make a request for a unanimous-consent agreement concerning a vote on the pending bill.

Mr. MARTINE of New Jersey. Mr. President, I ask the Senate now to reconsider the votes by which House bill 17256 was read the third time and passed.

Mr. BRANDEGEE. I did not hear the request of the Senator from New Jersey.

The PRESIDING OFFICER. The Senator will restate his motion. He was not heard.

Mr. MARTINE of New Jersey. Very well.

The PRESIDING OFFICER. As the Chair understands the request, it is not now in order.

Mr. BRANDEGEE. I wanted to hear the Senator's motion myself.

Mr. BACON. Of course the motion is not in order, Mr. President. No other business except that embraced in the unanimous-consent agreement under which the Senate is now proceeding is in order.

The PRESIDING OFFICER. The Senate is proceeding under a unanimous-consent agreement, and the request of the Senator from New Jersey is not now in order.

Mr. BRANDEGEE. I did not hear the request of the Senator from New Jersey; I do not know what the request was.

Mr. MARTINE of New Jersey. I withdraw my request.

Mr. JOHNSTON of Alabama. Mr. President, I ask unanimous consent for the present consideration of a bill on the calendar.

Mr. BRANDEGEE. That is not in order, Mr. President.

The PRESIDING OFFICER. The Chair is obliged to say that the Senator's request is not now in order, proceeding, as the Senate is, under a unanimous-consent agreement.

Mr. POINDEXTER. Mr. President, after the very elaborate and able discussion which has already been had upon the pending bill, it is not my intention to undertake to discuss at length the principles involved in it. I would hesitate even to make the



few observations which I shall make upon the bill and the interests which it involves were it not for the fact that the State which I represent in part is deeply concerned in the question of water-power development and that for many years it has been a very vital question with our people, as it has been throughout the West, what the relations of the Federal Government, of the State governments, and of private individuals should be in the ownership and development of water power.

There have been a great many collateral issues injected into the debate which are not involved in the pending measure. I say "collateral," although in many respects they are entirely irrelevant. The general question of conservation has been discussed. Of course, in one sense this bill involves the question of conservation, but in a very different phase from the question of the preservation of forests or the reservation of public lands for forest purposes by the Government of the United States. Whatever may be done as to the regulation and control, the granting or the withholding of permission to construct a dam in the Connecticut River or any other river; whatever provisions may be made for regulating the charges for power developed there or for taxes upon the property, still the water power will remain. Whoever may own it, whoever may use it, under whatever authority it may be developed, whether the reward or the profits from the development of this power shall be properly distributed, there is no possibility that the power itself, the natural resource which is concerned, shall be wasted or destroyed. In the case of forest reserves an entirely different question is involved—the issue of whether that great natural resource shall be preserved or whether it shall be wasted and extinguished forever.

Before making the brief observations which I intend to make as to the rights and the policy of the Federal Government in the regulation of power development in the streams of the country, I want to say a word, in passing, with reference to the question of forest reserves, which has been injected into the discussion by some Senators who are hostile to forest reserves and by other Senators who are in favor of forest reserves, as I understand is the Senator from Idaho [Mr. BORAH], who objects to such an extent to the administration of the present forest law and who continually attacks that administration with such force and virulence that it at least creates the impression that as the laws are administered he is opposed to the entire policy.

It would seem to be an illogical course for the Government of the United States to pursue to be expending \$11,000,000 in the very start of the proposition to buy forest lands from private parties in order to establish forest reserves in the East and at the same time to abandon forest lands which it already owns in the West, and turn them over, without restriction, either to the States or to private individuals, as a great many opponents of the forest-reserve policy advocate. If the retention by the Federal Government of certain portions of the mountains of the West, of the forested lands of the West, and perhaps some lands in connection therewith that are not forested is an injury to the people inhabiting those States, it seems incredible that the people of a great State like New York should be expending, out of the treasury of the State, \$14,000,000, and more, for the purpose of purchasing lands upon which forests are to be conserved by the State, for the same purpose and with the same effect upon the condition of the people and the conservation of natural resources, of course, as the preservation of forests by the National Government.

I am perfectly free to say that I am in entire agreement with many criticisms which the Senator from Idaho [Mr. BORAH] and the Senator from Colorado [Mr. THOMAS] have made as to certain details of the administration of the forest reserves; but the verdict upon the policy of forest reserves is not to be rendered by a review of the actions of a lot of subordinate agents of the United States Government distributed among the forest reserves and changed from time to time as the administration changes; but it is to be rendered, and ought to be rendered, upon a reading of the statute and a consideration of the principles under which forest reserves are established. The remedy for any maladministration is not an attack upon the policy of forest reserves, but it is by a recourse to those remedies which may be invoked to improve the administration, to correct error, and not, because it has certain imperfections in its application, to destroy the entire policy.

I only heard a portion of the very able and forceful address of the Senator from Colorado [Mr. THOMAS]; but, as I understood, he very clearly enunciated his position as being in entire opposition to the retention at all of public lands for forest-reserve purposes by the Government; at least, he announced the proposition that in general the State administration of public lands had been superior to that of the Nation. So far as I am concerned, I expect to vote and to advocate the re-

tention by the States of every authority and every power which they have to conserve forests upon State lands or upon any lands which may hereafter become State lands by the grant of the Federal Government or otherwise; but I also expect to vote for and advocate, as a corollary to that and as supplementary to that authority, the retention by the Federal Government of every authority and every power which it has in a reasonable way to conserve the forests of the Nation.

The reservoirs of water with which our arid wastes are to be reclaimed are in these mountain forests. The very power under discussion, the mighty forces hidden in our falling streams, have their source and sustenance in the mothering forests of the mountain slopes. Electric power, the subtle slave of man, swift and terrible in its movement but obedient to his gentlest touch, sees its creator in the soft rains and clinging snows the forests hold and filter. Ruthless private avarice would slaughter and destroy the forests, but upon their preservation and upon guarding from private extortion the power of their flowing streams, depend the comfort and prosperity of our people. With a fair distribution of land and its sister water under the fecund sun of the west, and the protection of water power from monopoly, the industrious people of those States will develop a splendid citizenship and enjoy the comforts of an advanced civilization. With the forests destroyed a rich land would revert to waste and desolation.

Now, Mr. President, as to the bill that is under consideration, the debate is somewhat confused because the question of policy is confounded with the question of the power of the Federal Government. Some Senators are opposed to this bill because it does not grant enough. The Senator from Alabama [Mr. BANKHEAD] is opposed to it because it is not an unconditional grant. Other Senators are opposed to the bill because it grants too much. Some Senators have asserted that if the Federal Government has the power to make a grant of this kind it should not exercise that power, but should construct a dam and develop the water power directly through the agencies of the Federal Government.

Mr. BRANDEGEE. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Connecticut?

Mr. POINDEXTER. I yield to the Senator from Connecticut. Mr. BRANDEGEE. At that point in the Senator's address I want to suggest to him that while the word "grant" does appear in one or two sections of the bill, in my opinion it is not legitimately to be considered a grant any more than the money condition attached to it is a tax. There is a good deal in the point of view and in the way a person looks at a project, because of the language in which it is described; but Senators will bear in mind that the only function of the Federal Government in this matter is because the petitioners who come here asking for the passage of this bill are obliged to get the consent of Congress before they will be allowed to maintain a dam in a navigable river. That is all this bill does. It gives to these parties, who have maintained a dam for nearly a century at the precise location in this same river, the consent of Congress to relocate the existing dam in the immediate vicinity, but at a point slightly farther along the river, where there is a little more water power. It is nothing but a license on the part of the Government to maintain what would otherwise be an obstruction to navigation, accompanied with conditions which do away with the obstructive character of the work. That is all there is to it.

Mr. WORKS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from California?

Mr. POINDEXTER. I yield to the Senator from California.

Mr. WORKS. I should like to ask the Senator from Connecticut [Mr. BRANDEGEE], if his view be the correct one, what there is for the Government to buy back? The provisions of this bill provide that the Government shall purchase these works from the company.

Mr. BRANDEGEE. The dam and the business.

Mr. WORKS. The Senator thinks the Government then may go into the business of distributing and selling water to the consumer?

Mr. BRANDEGEE. I hope it will not, and I do not think it ought to do so; but that is not what we are talking about now. If the Government is going some day to condemn these properties in accordance with the views of the distinguished Senator from Colorado [Mr. THOMAS] and itself own and operate all public utilities, then it ought to pay the people who have practically contracted with the State and spent their money in permanent structures and not confiscate their property.

Mr. WORKS. The Government pays nothing; it only gives a permit; and I am wondering what the Government can buy from the person to whom the permit is granted.

Mr. BRANDEGEE. I am answering the Senator as to what the Government can buy. If they have the constitutional authority to do so, they can buy everything. It has cost this company about \$6,000,000 to construct the dam, the dynamos, the buildings where the electricity is generated, its lines, poles, rights of way, and the land it has acquired. All the property in which it has invested its money can be bought—and when I say "bought," I mean it can be condemned.

Mr. WORKS. As I understand, the bill provides for buying it, and that was the reason I asked the Senator the question.

Mr. BRANDEGEE. It provides for condemnation by a court of competent jurisdiction, as the Senator will see if he will look at the terms of the bill.

Mr. WORKS. That is one portion of the bill. But there is also a provision, or an express agreement, to purchase the property, as I understand the bill.

Mr. BRANDEGEE. Of course, if they agree, there is no use in condemning it; but if they disagree as to what it is worth, then they go to the court for the court to decide it.

Mr. POINDEXTER. Mr. President, I expect to vote for this bill, not because I consider the bill what it ought to be but because I consider it an advance over any other similar franchise or permit or grant—whatever term may be applied to it—that has been passed heretofore by Congress. I think it makes very little difference whether it is called a grant or is called a license or whether it is called a permit, the entire question of the power of the Federal Government is disposed of by the consideration of the fact that without this thing, whatever it may be, it is generally conceded, although there seem to be some exceptions to that opinion, that the dam can not be built. It is a permit, a license, a grant by the Federal Government to the licensees or grantees of a power, an authority, and of property, because it is a power and authority which is fixed in its nature and is attached to real estate—a power which the Federal Government now possesses which it can withhold or can convey as it sees fit.

Mr. BRANDEGEE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Connecticut?

Mr. POINDEXTER. I yield to the Senator from Connecticut.

Mr. BRANDEGEE. Of course, if that is the Senator's view, I can not change it; but I do not want to sit silent and agree to it, or seem to agree to it. I do not think it is a grant, unless it conveys some property, and I do not think it does or ought to. I do not think the Government has any property to convey, grant, or bargain to anybody in this navigable stream.

Mr. POINDEXTER. If the Senator will allow me to make a suggestion, it is property, either tangible or intangible; is it not?

Mr. BRANDEGEE. No; I do not think it is the Government's property at all. I think that view of it is what creates most of the opposition to the bill. I think the Government has no right there whatever, except as a trustee for the people to improve the navigation of that navigable river. All this bill provides on that subject, in the third line of the bill, is:

That the assent of Congress is hereby given to the Connecticut River Co. . . . to maintain . . . such . . . dam.

It does not convey anything except the right to maintain. It does not sell any water power, nor does it sell any water; and, in my judgment, it has not any business to sell the water.

Mr. POINDEXTER. I think what name is given to it is entirely academic. I suppose the Senator will agree that the development of this property can not proceed by the company making application for this permit unless the bill is passed; so it is undoubtedly a thing of value, because it has in fact a commercial and a pecuniary value.

This bill contains a provision, which has been sharply criticized, granting to the Secretary of War a discretion to fix tax rates. I should prefer that Congress should fix such rates. When the famous Coosa River Dam bill was pending, at the last session of Congress, I offered an amendment to the bill providing that the power company to which the grant was made should pay to the Government 1 per cent of the net profits derived from light and power.

It seems to me that is a far preferable arrangement for returning to the Federal Government a portion of the profits of this enterprise rather than to leave it in the discretion of the Secretary of War. But because I believe in the principle that there should be paid to the Federal Government some return for the exercise of this privilege and for the authority to operate and conduct this great enterprise, I shall support the bill as it now is, although it is not as I should prefer it. I expect to offer the amendment which I offered to the other bill. I do

not expect that it will get much support, because one section of the Senate is opposed to any tax or return and the other is divided as to the method of fixing the rates.

Mr. JOHNSTON of Alabama. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Alabama?

Mr. POINDEXTER. I yield to the Senator from Alabama.

Mr. JOHNSTON of Alabama. I should like to ask the Senator why, in supporting the bill for the extension of the time for the construction of a dam across the Pend d'Oreille River in Washington under the general dam act, he did not attach a provision that the Pend d'Oreille Development Co. should make compensation to the Government if it is a rule that should have universal application?

Mr. POINDEXTER. I am not aware that I supported that measure.

Mr. JOHNSTON of Alabama. The bill was approved on the 20th day of May, 1912, and relates to the building of a dam under the general dam act without any compensation.

Mr. POINDEXTER. It is a matter of which I have no knowledge, Mr. President. I do not think the Record will disclose that I supported that bill in any way at all.

Mr. JOHNSTON of Alabama. I supposed, as it relates to a matter in the Senator's own State, that he had given attention to the bill.

Mr. POINDEXTER. There are a great many bills introduced relating to my own State about which it would be difficult for me to have any knowledge.

I should prefer, Mr. President, in explaining the position which I take upon the bill, that the amendment of the Senator from Idaho [Mr. BORAH] should be adopted. I think the bill would be a better one with a provision that the Interstate Commerce Commission—I think that is the proper agency of the Government, although some other agency might be selected for exercising that power—should have the right, in case of need to exercise it, to regulate the charges for power conveyed from Connecticut into other States. I think there should be also attached to the measure the amendment, or the substance of the amendment, offered by my colleague from the State of Washington [Mr. JONES], reserving to the State of Connecticut the right to regulate charges for power generated and used entirely within that State, and removing also any question, because of the grant being made by the Federal Government, as to the power of the State to levy taxes upon the property.

Mr. BRANDEGEE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Connecticut?

Mr. POINDEXTER. I yield to the Senator from Connecticut.

Mr. BRANDEGEE. I will say, for the information of the Senator from Washington and other Senators, that the State of Connecticut has a board of public-service commissioners, or what I believe is called a public-utilities board. The General Assembly of the State of Connecticut, which chartered this old navigation company and has amended its charter several times, has reserved the right to alter, amend, or repeal the act of incorporation and the amendments thereto. The legislature itself undoubtedly has the right to regulate the charges, but that is one of the principal functions of our board of public utilities.

If that were not already amply provided for by the statutes of the State which incorporated this company, I should have no objection to the amendment proposed by the Senator from Washington. But it is amply covered by our own State laws, and I am one of those who believe in allowing each State to regulate its own affairs as much as possible, free from the interference of Washington. We have to come here, in this case, to get the permit to cross a navigable river with this dam; that is all.

Mr. CLARK of Wyoming. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Wyoming?

Mr. CLARK of Wyoming. Will the Senator yield for a question for information?

Mr. POINDEXTER. I yield.

Mr. CLARK of Wyoming. I wish to ask the Senator from Connecticut whether or not the public-service commission or the statutes of Connecticut fix the rate of profit beyond which an investment shall not pay?

Mr. BRANDEGEE. No; I think not, Mr. President. I will not be sure, but I am quite firmly of the opinion that there is no limit, except, I believe, no steam railroad company in the State is allowed to pay more than 10 per cent or 8 per cent, whatever it may be. Very few of them are able to earn anything like that.



Mr. CLARK of Wyoming. The query in my mind was whether there might be a conflict between the law or the rule of that commission and the terms of the contract proposed to be entered into here.

Mr. BRANDEGEE. My colleague [Mr. McLEAN] tells me that the charter of this very company limits them to 8 per cent, anyway. The act creating the Public Service Commission of Connecticut, which I have here at my desk, is a long, comprehensive, up-to-date act. It provides in section 23, under the title "Rates and service affecting many persons," for a process by which any 10 persons may bring to the public-service commission a petition alleging too high rates or poor service or any grievance that they may have, and the whole matter is absolutely in the hands of the public-service commission to fix rates and to alter or change them from time to time.

Mr. SMITH of Arizona. If the Senator will pardon me, it occurs to me that if, under this grant, permission or right or whatever you may please to call it, the Government gives anything, if it has anything to give, to the Connecticut River Co., it is provided in this contract or in their charter—I do not remember which, from hearing them read—that they shall not collect more than 8 per cent except under the conditions stated; that is, that they shall divide the surplus.

Mr. BRANDEGEE. No; that is in the act—

Mr. SMITH of Arizona. If the Senator will allow me to finish, he will catch my point. It is immaterial where it is. The question arises, if this be a grant or anything that the Government has a right to give, certainly permission is given by the contract or the charter that they shall have 8 per cent, if they can get that much, and under certain conditions more. In the face of that, if the Government has any right here at all, what effect will that have on the right of the Senator's State to limit the amount or to say what they shall charge for power?

Mr. BRANDEGEE. Mr. President, I think I catch the drift of the Senator's question, though it is a little long. When the Senator talks about 8 per cent or 9 per cent, I think he has in mind something that was published in a newspaper as to the proposed division of profits between the Government and the power company.

Mr. CLARK of Wyoming. No, no; it is published in the return of the Secretary of War.

Mr. SMITH of Arizona. I read it from some report that I saw here the other day.

Mr. BRANDEGEE. Very well. What I was talking about was the original charter of this company, which limited it to 8 per cent.

Mr. SMITH of Arizona. I was speaking of their contract with the Secretary of War, or the proposed contract into which they are to enter. That speaks of 8 per cent.

Mr. BRANDEGEE. I know it does.

Mr. SMITH of Arizona. The Senator already has the balance of my question.

Mr. BRANDEGEE. If the company itself is limited by its own charter to a maximum return of 8 per cent upon the stock, and the Government of the United States passes an act saying that all above 9 per cent shall be divided by the Government and the corporation, I would not give much for what the Government would get out of it.

Mr. SMITH of Arizona. On what ground?

Mr. BRANDEGEE. Because it can not pay more than 8 per cent anyway under its own charter.

Mr. SMITH of Arizona. Then that raises the very question I had in mind, if the Senator will bear with me, as between the Government and the State. If the United States has the power to interfere with this contract to fix limitations, to fix the rate, and to change it when it pleases, the State can not limit it; and if it has not the power, the State has the absolute power to do it.

Mr. BRANDEGEE. I do not think the two things have anything to do with each other. All that was provided by the proposed contract between the Secretary of War and the company was a method of division and compensation, as they called it, between themselves. It had nothing whatever to do with a legal limitation placed by the State of Connecticut upon the dividends that its own companies shall have.

Mr. POINDEXTER. Mr. President, I think I shall have to ask leave to proceed with the very brief remarks I have to make.

Mr. BRANDEGEE. I am very grateful to the Senator for being released, I am sure.

Mr. POINDEXTER. I understand the Senator's question has been answered. The very colloquy between the Senator from Arizona and the Senator from Connecticut, showing a difference of opinion as to whether or not under this grant the State of Connecticut would have power to levy taxes, is a very strong

argument for inserting in the bill an express provision reserving that power to the State of Connecticut.

Mr. BRANDEGEE. There is not a word said about taxes. It is as to the amount of dividends they shall pay.

Mr. POINDEXTER. Apply it to the right to limit dividends, then. The same principle applies to that and the same principle would extend to the right to levy taxes upon property. Every lawyer who has observed the tremendous amount of litigation in the courts on the part of corporations engaged in any form of interstate business or corporations which derive their powers or any part of them from the Federal Government, resisting the collection of taxes by municipalities and by States, will realize that it would be a wise thing for Congress to remove doubt upon that question, in making a grant of this kind, by an express provision that the State shall have the power, and that this grant shall not interfere in any way with the power of the State, to collect taxes or to control other features of this property so far as intrastate business is concerned. So I say that I think the amendment of my colleague from Washington [Mr. Jones], in substance, with some changes, would be an improvement to this bill and an important and valuable amendment to it.

Mr. BRANDEGEE. I could not for a minute agree to that. I could not for a minute agree that if the State of Connecticut has not power to regulate its own creatures and corporations, Congress, no matter how many acts it passed, could give the State of Connecticut any power whatever. Whatever power Congress has was delegated to it in the Constitution made by the States. The States have the power about these matters, and not Congress at all.

Mr. POINDEXTER. I did not expect the Senator from Connecticut to agree to that; but the fact that there is a difference of opinion is the reason I make the suggestion.

Mr. BRANDEGEE. I do not think there is any difference.

Mr. WILLIAMS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Mississippi?

Mr. POINDEXTER. I yield.

Mr. WILLIAMS. I want to suggest this idea, which I think, if followed out with this bill and with other bills, might settle a great many of these differences and might result in a better method of administration.

I take it that what we are all seeking to accomplish—that is, men of my school of thought, at any rate—is this: We are tired of giving to public-utility corporations gratis valuable privileges. We want them to pay something to the public for what they obtain. It seems to me it is a secondary consideration whether that something which is paid shall go to the Federal Government or shall go to the State government.

If it be true that Congress has the power, as an incident to its power to license, to affix conditions to the license granted, then it can affix a condition of payment to the State as well as a condition of payment to itself. It seems to me, therefore, that it would be wiser and in better keeping with the principles of the Government if this bill were to recite that this corporation should pay to the State of Connecticut, instead of to the Federal Government, such taxes as might be fixed by the public-utilities commission of the State of Connecticut. The State of Connecticut has such a public-utilities commission, has it not?

Mr. BRANDEGEE. Yes.

Mr. WILLIAMS. Every State has something by that name, or some body or other, that exercises substantially the same power.

It seems to me that whenever any authority of any description has an unlimited power, whether it be a right or not, to grant or to refuse a license, as an incident to that power it has the right to attach conditions to the license if it grants it. I should like to see the license in connection with public utilities conditioned in a manner that would maintain the right of local self-government and the right of the State; and if any revenue at all is to be derived from it, I should like to see the State derive the revenue.

Mr. BRANDEGEE. Will the Senator from Washington allow me to answer the Senator from Mississippi for a moment?

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Connecticut?

Mr. POINDEXTER. Certainly.

Mr. WILLIAMS. One moment. I should like to have the provision in the bill changed so that Congress would grant the license upon condition that the corporation should pay to the State of Connecticut such tax as might be prescribed by the Legislature of Connecticut or the public utilities commission, whichever you choose as the proper authority of the State.

Mr. BRANDEGEE. Let me answer the Senator, Mr. President. I agree with him that Congress has power to attach to

the license any condition which relates to the subject matter of the power under which Congress is acting.

Mr. WILLIAMS. One moment. As a Federal question, the Senator's limitation is correct; but if you are going to make a limitation which shall accrue to the State, then the subject-matter, in so far as the State is charged with it, is the corporation itself.

Mr. BRANDEGEE. The Senator does not give me time to make my point.

Mr. WILLIAMS. All right.

Mr. BRANDEGEE. It is this: The only kind of condition that we can attach to the issuance of this license is a condition in aid of navigation. Under the commerce clause of the Constitution Congress has the sole authority over navigation. If we should say, "We will grant this license provided this company shall pay so much a year to the treasury of the State of Connecticut, to be expended by the legislature of that State in its discretion," it would be utterly null and void, in my opinion, because it would be ultra vires. We have no authority to affix any condition except such a condition as will promote navigation. Does the Senator catch my point so far?

Mr. WILLIAMS. I catch it; yes.

Mr. BRANDEGEE. There is another reason why it would not be wise, even if we had authority, to put that money into the treasury of the State of Connecticut. Congress is supreme in the control of navigable streams. The State of Connecticut can not use money in improving the navigable streams of Connecticut without coming to Washington from time to time to get the approval of the War Department as to where it should be spent, in what rivers, in what proportions, and so forth; and we would lose the services of the Board of Army Engineers and all the machinery through which we make our improvements in navigation.

Mr. WILLIAMS. I think I have caught the Senator's point, but I do not think the Senator has caught mine. As long as the revenue derived from the operation of the provision goes to the Federal Government, the limitation suggested by the Senator is correct. But if the Federal Government should provide, in a general act of any sort, that "nothing herein contained shall contravene any law of the State of Connecticut," that would be perfectly proper.

Mr. BRANDEGEE. I do not think the Senator does catch my point, which is that Congress has no authority to impose any condition or restriction in the issuing of this license except one which relates to navigation.

Mr. SMITH of Arizona. It could not divert it to any other purpose.

Mr. BRANDEGEE. It could say, "You shall pay so much money to be used to improve the navigation of the Connecticut River"; but I do not think it could say that money should be paid into the treasury of the State of Connecticut to be used for anything else except the improvement of navigation.

Mr. WILLIAMS. Mr. President, mine was a mere inquiry, and I do not think I am fully prepared to argue the matter; but I am inclined to think the distinction is about this: Where the Federal Government charges something for a license, it is like a tax which is levied; it must be pertinent or relevant to some delegated power. But wherever it affixes a condition to accrue to a State, that power is not a delegated one at all, and is not limited by any delegation in the Constitution. I am not ready to argue that question now, however, and I should not want to take up the time of the Senate by doing it even if I were. I just threw it out as a suggestion.

Mr. BRANDEGEE. I do not think the Federal Government would have any authority whatever to affix such a condition.

The PRESIDING OFFICER. The Senator from Washington will proceed.

Mr. POINDEXTER. Mr. President, I can not agree with the suggestion of the Senator from Mississippi that the Federal Government shall entirely waive its right to collect revenue from this water power.

Mr. WILLIAMS. I did not want it to waive it. I wanted it in the act to devote it to the State of Connecticut. Even that is doubtful.

Mr. POINDEXTER. As far as a conveyance of power from the Federal Government to the State is concerned, I would much prefer that both jurisdictions should retain the taxing power. Of course that is double taxation, but that is a common feature of taxation. In a great many instances we have triple taxation. We have double taxation, by the State and by the Federal Government, in a great many different lines and a great many different species of property. The fact that it is double taxation ought to be taken into account by both jurisdictions in fixing the rate. But it is so true, as the Senator from Mississippi has said, that we have been granting away valuable privileges

without return, that I for one shall insist that wherever there is a power in the Government, whether State or National, to collect revenue, it shall be retained, and the power to exercise it actively shall be preserved.

Let me now answer very briefly the opposition to this bill, which comes from those who come here rather arrogantly, it seems to me—I do not say Senators come in that attitude, but others come in that attitude—rather demanding these privileges and these grants, and speaking with a tone of resentment and annoyance if it is proposed to attach any conditions to the grant by way of reservation of a right to regulate rates or to collect a revenue from it. The advocates here last year of the so-called Coosa River dam bill are now actively opposing this bill, not because of any lack of power or asserted lack of power in the Federal Government to grant a permit or license to construct this dam, acknowledging the power and the right of the Government to grant or withhold the privilege, but demanding that it shall be unconditional, although it is a water power outside of their State, because they say they do not want to see a precedent established which may affect the Coosa River dam.

There seems to be a sort of obsession on the part of some of the advocates of the Coosa River dam bill. They had introduced in the Senate here the other day and had read, with the signatures attached to it, a resolution which was adopted by some private citizens expressing their opinion upon this measure. One Senator asserted that these individuals were putting their noses into business with which they had nothing to do, he being obsessed, apparently, with the idea that nobody has anything to do with this Coosa River proposition except the power company which is seeking to acquire the right.

These citizens of the United States, who are interested in the Government and in the revenues and property of the Government, according to the advocates of the Coosa River dam bill, ought to keep their mouths shut about water power in general, on the theory that nobody has anything to say about it but those who come here superciliously demanding an unconditional free grant of valuable property. It is an obsession. In addition to all the services of the distinguished Senators in other matters, in war and in peace, they will go down in history as the men who made the Coosa River famous. I think Mr. William Draper Lewis, a distinguished gentleman, a citizen who has rendered good return of his citizenship, is entitled to express an opinion.

Mr. WILLIAMS. Who is he?

Mr. POINDEXTER. Mr. William Draper Lewis.

Mr. WILLIAMS. In addition to the Senators from Alabama making the Coosa River famous, the Senator from Washington is making this gentleman famous.

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Mississippi?

Mr. POINDEXTER. I yield.

Mr. WILLIAMS. The Senator has already yielded, and the remark has been made.

Mr. POINDEXTER. His name was attached to a paper which was introduced by the Senator from Alabama [Mr. BANKHEAD], and he has a right to express his views and his judgment on the general questions of water power, notwithstanding the resentment of the Senator.

Mr. WILLIAMS. I should like to ask a Senator a question there, Mr. President. I know that he knows, or at least I think he knows. If I did not think he knew I would not ask him. Of course any citizen of the United States has a right to petition Congress upon any question or to write to any Senator or to any Representative upon any public question. What I wanted to ask the Senator from Washington was whether he knows that this gentleman and others who write and call themselves the legislative committee of the Progressive Party—

Mr. POINDEXTER. Yes; they have a right to call themselves the legislative committee of the Progressive Party. Why should they not have that right?

Mr. WILLIAMS. I did not want to ask whether they had the right; I did not want to ask whether they had the power or whether they had the liberty under the law to do it or not. I wanted to ask whether they had been constituted by the Progressive Party as a legislative committee, sitting, as the French say, in constant session at Washington.

Mr. POINDEXTER. No; they are not sitting in constant session at Washington; and that does not affect the question in any way at all. The organization of the Progressive Party is rather irrelevant to the question here.

Mr. WILLIAMS. I admit that.

Mr. POINDEXTER. The Senator has admitted that it is immaterial whether they are the legislative committee of the Progressive Party or not. But they are the legislative committee of that party, and are duly constituted as such.



Mr. WILLIAMS. They are duly constituted by this political organization, then, as a legislative committee?

Mr. POINDEXTER. Yes; at a national convention.

Mr. WILLIAMS. I made the inquiry because whenever I got orders from them I wanted to know that they were duly authorized and constituted.

Mr. POINDEXTER. Mr. President, the control of water power by the Federal Government depends upon very different authority, under different conditions. It is asserted generally by many of the opponents to the pending bill that the Federal Government under no condition has the power to control water power or to attach such conditions to the grant of water power. It has been very generally discussed in its application to navigable streams. In a large portion of the country, in many States, a very different phase of the question is involved—where the power site is on public lands belonging to the Nation and where the application for an act of Congress is for a grant of that land.

The Federal Government owns the absolute, unconditional title in those cases; but the same objection is made to any regulation or to any condition in cases where the applicants are seeking a grant of land as is made to this bill, where the land itself is private but where the stream is a navigable stream.

It is perfectly obvious that where the Government owns the abutting property or where the stream is not a meandered stream and the bed of the stream goes to the owners of the land with the patent which is conveyed, the Federal Government in granting the real estate upon which the dam is to be constructed may attach such conditions, may fix such compensation for the grant as it sees fit, the same as any private owner could.

Mr. SMITH of Arizona. Will the Senator permit me to interrupt him right there? There is the very point of the question in which I am personally interested.

Mr. POINDEXTER. I am speaking of it because it is of interest to the entire western country.

Mr. SMITH of Arizona. You make the concession, though, that the Government owns all the right—under what right I do not know—to the nonnavigable waters of the State, when the old doctrine of the riparian right was expressly repealed, if that ever existed. In fact it never did exist. That is the common law of that part of the country.

Now, you say by virtue of the ownership of the land—and the cases are hundreds where the Supreme Court has so decided—the mere fact of proprietary ownership in the land gives the Government the right to withhold the water in a water site from its diversion from the use regulated by the statute of the State. The Government has no more right to the waters nonnavigable—yes, and I will say navigable—in any State than the title they could give by virtue of the owning of public lands; I should say than it could convey to the citizen in issuing a patent to that land. The Government gives to the citizen, in other words, all the title it has. The citizen can immediately be subjected to the eminent-domain power of the State and a right of way across his land for the use of the water for the purposes mentioned in the statute.

You profess to withhold these water rights by the mere fact of the proprietary ownership by the Government of the land, when the Supreme Court has decided in more than one case that over the rights of way even of the Federal Government the State can carry the water of its streams that are nonnavigable. That is equally true of navigable streams, for the only distinction between them is the mere easement that the Government has in the navigable water, and I have never known a case where an easement carried any power with it further than the exercise of the pure right of the easement itself.

Therefore the Government itself has no more power by the mere ownership of the public land in the nonnavigable waters of our rivers than you or I individually have, for the Supreme Court from the case in Third Howard down to now has decided that it is a proprietary ownership that the Government has.

So there is the whole point of our contention, that the Government, having no power, can not reserve these water rights. Our objection to the bill of the Senator from Connecticut is that you are giving a license or an apparent precedent for the Senate of the United States to carry out a doctrine which means nothing more nor less than the absolute desolation of the western country. You dedicate to deserts and to everlasting silence a country that we have been struggling for 30 years to make habitable. And this is what you call conservation.

Mr. POINDEXTER. Mr. President, the Senator from Arizona misapprehends anything that I said if he conceives that I asserted the Federal Government had the right to the water in the streams. I said that it had the right to the land, and that

in granting the land they could retain such compensation or fix such conditions as any other owner of land in conveying it had the power to do.

Mr. SMITH of Arizona. I will grant that, as a matter of course.

Mr. POINDEXTER. The retention of compensation or of the right to regulate the use of that land and of the water which flows over it is simply a retention of the power which the Government already has as a riparian owner in this case to use that water.

Mr. SMITH of Arizona. If the Senator will pardon me, there is no riparian right, and never has been.

Mr. POINDEXTER. The Senator is entirely mistaken.

Mr. SMITH of Arizona. If the Senator will show me where it is—the constitution of Arizona and its statutes dedicated the waters, and the Government has recognized that ever since 1863.

Mr. POINDEXTER. I am not familiar with the laws of Arizona, but the common law of riparian rights still exists in Washington, and I suppose in Arizona also, modified by the right to appropriate water, where needed and under certain conditions, for irrigation.

The dedication and the declaration of the control of the State over the waters of the State do not interfere in any way whatever with the riparian right. The right to divert the water for irrigation, the right to use it for manufactures, the right of the riparian owner under the common law where they are not in conflict with each other, are all in force in the State of Washington. If a man under some superior right takes water out of a stream for the purpose of irrigation and interferes with the riparian right of an owner lower down the stream, it is not actionable.

Mr. SMITH of Arizona. It is under the English doctrine, absolutely.

Mr. POINDEXTER. It is not under the western doctrine. But he has no right to divert the water of the stream otherwise than for the special purposes provided by the laws of the State, to the injury of the riparian owner lower down.

Mr. SMITH of Arizona. The riparian right of the English and the American common law, if we had it, is the same now that it was in the beginning, that in all riparian rights the river must flow undiluted in substance and undiminished in quantity. That is the riparian doctrine. And now you are appealing to a riparian doctrine to divert water from a stream. You had as well talk of a square circle.

Mr. POINDEXTER. There are many rights still preserved in the West as incident and appurtenant to riparian ownership. But the question at issue is not that of diverting water from a stream. It is that of granting power to erect a dam in the stream.

Mr. SMITH of Arizona. There is no difference.

Mr. POINDEXTER. Ordinarily the people who secure the right to erect these dams from the Federal Government at the same time secure a right to the use of the water under the State statute. The Federal Government does not grant the right to use the water. It grants a different interest in the project which is to be developed which is just as essential a part of the completed plant as the use of the water. It may be for manufactures; it may be for, and usually is for, the development of electrical energy. The flow of the water is not diminished. It proceeds in its course undiminished and in accordance with every requirement of the laws of the State, of the law of riparian ownership where that is applicable, or of the right to use the water for irrigation where that is applicable.

There can not be any question, Mr. President, as to the power of the Federal Government, if it has control over the erection of dams in streams where it owns the sites, where it owns the land, or in streams which are navigable where it does not own the land, to attach conditions upon which the grant shall be made; and that is all that is asked in this case.

Mr. SMITH of Arizona. If I am correct in my contention that the Federal Government is merely a proprietary owner, does the Senator from Washington conceive that the Federal Government can do anything more than any other proprietary owner of lands could do, in the face of a statute and of a Constitution that say all these waters belong to the State and the people of the State?

Mr. POINDEXTER. Any other owner could do the same thing.

Mr. SMITH of Arizona. He can not.

Mr. POINDEXTER. I differ with the Senator from Arizona.

Mr. SMITH of Arizona. I do not mean to differ so emphatically with the Senator, for he is apt to know as well as I. I want at least to concede that to him.

Mr. POINDEXTER. If the Senator from Arizona owns land which is needed for the development of a water-power project he can attach his own conditions, unless the State should condemn it and it should be acquired under some public law which fixes the conditions.

Mr. SMITH of Arizona. No.

Mr. POINDEXTER. But if it were to be acquired by the voluntary grant of a private owner the private owner could attach every condition to the grant which is sought here or has ever been suggested here to be attached to these bills on the part of the Government.

Mr. SMITH of Arizona. The Senator and I are not so far apart as I thought. Here is my contention. It is that neither I nor the Federal Government can by the erection of a dam on a power site in any one of the irrigating or desert States interfere with anybody. I can erect a dam if I do not interfere with anybody, and that dam can stay there, and the Government can erect it if it does not interfere with anybody. The Government, under the decision and under the Constitution, may erect a dam to-morrow, and if the Government is doing nothing with that water I can take it out, by the right of eminent domain, across Government land and submit it to irrigation, and the Government can not complain, for there is no title to that water except use, and the Government can not withhold it from use.

Mr. POINDEXTER. I do not care, Mr. President, to pursue further the question of title, because it is not involved in the case. I admit that the title to the water may depend and does depend upon a different ownership. The right to the use of the water may be invested in the private individual. Some private individual lower down the stream may long ago in our western country have acquired by prior appropriation, which is a fundamental law of irrigation, the right to divert water from the stream for the purpose of irrigating his land. Neither the Federal Government, of course, nor the State government has any right to grant an authority to that water in the stream above him so as to deprive him of that use.

That question of State or Federal control of waters is not involved, whether it is proposed by a private company to take the water to the detriment and injury of the lower proprietor who has appropriated it for irrigation, or whether it is simply a grant by the Government of the right to erect a dam across the stream without any condition as to the use of the water on the part of the Government.

Mr. SMITH of Arizona. If the Senator will bear with me once more—

Mr. POINDEXTER. The right to divert the water would depend upon the laws of the State or upon the private corporation, which may have acquired the use of the water under the laws of the State. It is not involved in the bills pending here and which are under discussion; nor is it here proposed, so far as I have seen by any amendment which has been offered to them, to affect in any way whatever—

Mr. SMITH of Arizona. If the Senator will pardon me—

Mr. POINDEXTER. Just let me complete the sentence. To affect in any way whatever the right to use the water owned by any private individual or owned by the State.

Mr. SMITH of Arizona. Now, if the Senator will pardon me one more interruption, I shall not interrupt his further statement of the matter.

Mr. POINDEXTER. I will yield the floor in a very few minutes.

Mr. SMITH of Arizona. I will be done with one question. We think in this bill a precedent has already been set, and we see in it a governmental purpose to carry the doctrine of the bill into the conditions which I have just been speaking of.

Mr. POINDEXTER. Some people see spooks and things at night. I do not see anything in the bill interfering with the free operation of the constitution and laws of the State upon the waters of the State.

Mr. SMITH of Arizona. I judge that largely from the arguments I have been listening to lately.

But aside from that, the navigable water in the Connecticut River was owned by that country long before the Government had any right to it whatever. In its original state they granted an easement over it for navigation. Now, that has existed for a hundred years. To-day they start out on the new doctrine that the United States Government, instead of the State of Connecticut, will take the Connecticut River, and the State of Connecticut ought to have it. The water belongs to the State, and the Government has no more title to it than I have, if not used for navigation, for if the Government can develop power and use that, it can run a cotton mill and sell the cotton at a profit; it goes into commercial business. If this goes to Connecticut, that State, under the regulation of a State law, will protect the people of Connecticut from this governmental tax,

save the consumers of this power in Connecticut, and conserve their interest by keeping the heavy hand of the Government's taxation off their own development.

I claim that these waters do not belong to the Government any more than the nonnavigable waters of the West belong to the Government. Then the Government has no business to put its hand on it in any way further than to improve its navigation. When it gives a party the privilege to improve the navigation, it can say what sort of a dam it shall build, what sort of locks it shall build, and also the power, probably, to open the locks and close them as boats pass. I think the Senator from Connecticut concedes that the Government can not go outside of the delegated power to open and protect the navigation of the stream. Outside of that the water is as free to the State of Connecticut as the nonnavigable waters of the West are free to the people of that part of the country.

If you permit the Government to do these things, Senators, as sure as I stand here, under a pretense of helping the people, under a cry against monopoly, you are going to monopolize the waters as you have already monopolized the land, and, as I said before, and say finally, you will put an absolute quietus on the development and let trees grow where men ought to flourish.

Mr. POINDEXTER. It is rather a curious argument advanced by the Senator from Arizona and other Senators, that because in times past the Government has been too liberal in granting away the land we ought to continue to be excessively liberal in the grant of nature's resources—

Mr. SMITH of Arizona. Oh, no; on the contrary—

Mr. POINDEXTER. And pass bills involving the development of water power in navigable or nonnavigable streams without any conditions attached, without any right reserved to regulate rates or to collect revenues.

Mr. SMITH of Arizona. The States reserved that. I wish to say to the Senator that he and I are aiming at exactly the same purpose.

Mr. POINDEXTER. If the Senator from Arizona will allow me, I will conclude the very brief remarks which I desire to deliver.

Mr. SMITH of Arizona. I wish to say to the Senator that he and I are aiming at exactly the same purpose. I am as much a conservationist in this matter as the Senator from Washington can possibly be. So, far from opposing the Senator's position, I am trying to show him that I am attempting to obtain the very same thing that he is attempting to secure. I believe in the Senator's wholesome doctrine that these things must be preserved for the use of the people; that they must be kept out of monopoly; but I think the Senator is following the course that will turn them into the hands of monopoly. I extend my hand to the Senator to help accomplish the purpose at which we are both aiming. The only difference is in the manner of accomplishment. There is where our roads divide, the Senator thinking one procedure would best accomplish the desired result, and my idea being that, under certain conditions with which I am acquainted, the Senator's method would ruin, while in my judgment the other method would accomplish what he and I are both striving to do. I think the difficulty in this whole matter is because of the diversity of interests, the separate surroundings, and the different atmosphere and purposes of the people.

Mr. POINDEXTER. Mr. President, there is no provision in the pending bill which undertakes on the part of the Federal Government to grant to the Connecticut River Co. any part of the waters of the Connecticut River. There are some provisions in the bill regulating the flow of the water in the river and providing that at certain periods it shall be at certain stages, which are obviously in the interest of navigation. I think it will not be contended by anybody that that is not within the power of the Federal Government.

Mr. SMITH of Arizona. Clearly so.

Mr. POINDEXTER. So far as it does not interfere with navigation, the State of Connecticut, or any private individual in the State of Connecticut, lawfully or unlawfully could deprive this Connecticut River Co. of every drop of water which it sought to use for the purpose of developing electrical power, and the Federal Government would have no right to complain, nor could the Connecticut River Co. assert any authority under this grant from the Federal Government, because the grant does not undertake to confer upon it the right to use any water.

Mr. SMITH of Arizona. But the State gives the right to this company. There is where we agree again. The Federal Government grants the State nothing.

Mr. POINDEXTER. Is the Senator from Arizona complaining about the State giving the right?



Mr. SMITH of Arizona. I am not complaining about the State giving the right to the Connecticut River Co. I am complaining about the Government interfering with the right which the State and the individual alone has to do with, and the State can best conserve that right.

Mr. POINDEXTER. In what respect does the Government interfere with the right of the State?

Mr. SMITH of Arizona. By pretending to say, "We can change this contract given to these people by the State."

Mr. POINDEXTER. There is nothing in this contract as to the use of the water in the stream, nor is there in any one of these bills conveying water-power sites in nonnavigable streams in the West. The right to use the water depends upon different laws, a different authority. I agree with the Senator from Idaho [Mr. BORAH] that it would be perfectly futile and beyond the power of the Federal Government to undertake in an act of Congress to fix the right to use the water or to grant authority to use the water. This bill does not undertake to do so.

Mr. President, I have stated under some difficulties, on account of frequent interruptions, my views about these matters. It is urged by some Senators that the bill ought not to be passed in any form. Those Senators at the same time are opposing what is called "conservation," on the ground that the natural resources ought to be developed; that water power ought to be used. How can water power be developed in the Connecticut River at this point unless the Federal Government, under the authority which it has and which is necessary in order to enable the Connecticut River Co. to proceed with this work, grants that authority? To refuse this grant altogether is not in the interest of the development and use of natural resources, of which we hear so much. On the other hand, I will say, in just one word, the development of the natural resources of the country is not necessarily promoted by unconditional grants to private individuals or corporations. In some of the counties of the State of Washington three-fourths of their area has for years been owned by private companies.

They are not being developed; they are not open for settlement; they are not open for homes; they pay but an inadequate portion of the taxes which go to support the county and State governments. Many of the great water powers of the West have for many years been in private hands, but that does not result in their development. They are held for speculative purposes, and will perhaps be held for many years for speculation, in private hands.

It is admitted by the Senator from Colorado [Mr. THOMAS] that there is an incipient water power trust; that it has power, or will have power, to extort unreasonable prices from the people for the use of the electrical energy which has become a necessity of their communities. The question that is involved in this bill, in view of that water-power monopoly, is whether when the Federal Government has an opportunity to reserve a power which may be used to restrain an arrogant and merciless monopoly, it shall be surrendered. I am opposed to that surrender. This bill is not in conflict with any right or authority of the States; and, if necessary, the rights of the State should be expressly excepted from any privilege granted in this bill. Both the power of the Federal Government and the power of the State, wherever it exists, should be preserved, so that if one jurisdiction fails to exercise it, the people may find relief through the activity of the other.

Mr. BRANDEGEE. Mr. President, I am not at all worried about the State of Connecticut losing any rights that it may have in the rivers within its limits by any bill that Congress may pass. Any bill that Congress undertook to pass assuming any rights that it did not have in the navigable rivers in the State of Connecticut would be absolutely null and void. I do not think any amendment is necessary to the bill in that respect. I am generally opposed to the use of unnecessary language, either written or spoken, and I hope that the amendment will not prevail.

There is absolutely nothing in this bill or sought to be obtained by the passage of the bill except the permission from the United States Government to maintain a dam, which, as I have said, has been substantially in position for 80 years or more in the Connecticut River, and to attach to the issuing of that permit the provision that the company which obtains the permit shall annually pay to the United States Treasury a certain sum of money to be devoted to the improvement of navigation on the very river which is crossed by the dam. It is a perfectly simple proposition. Those who believe that the Government can attach to the issuing of the permit a condition that the licensee should pay a sum of money should vote for the bill; those who believe that the Government has no such constitutional authority under the commerce clause of the Constitution should vote against the bill.

For two or three days here we have roamed over the country, from the tops of the Sierra Nevada Mountains, through the Rockies, down to the Rio Grande, through all the arid States, and the Delta of the Mississippi, talking about forest reserves and intricate questions of ownership of the water. We have discussed who owns it when it is in the Atlantic Ocean and who owns it when it is in the process of evaporation, and when it is being blown ashore and precipitated upon the tops of mountains and flowing back to the sea again—interesting, speculative, and somewhat obscure questions, but absolutely irrelevant to the question which ought to be debated on this bill.

I think the Government has a clear and unquestioned right in issuing these licenses to impose a money payment upon the licensee, to be devoted to the purposes of navigation, and to nothing else; and I think it has a right to say it shall be paid into the United States Treasury and appropriated in the discretion of Congress to improve the navigability of the Connecticut River. I may be entirely wrong about that. Some good lawyers think the other way. The Senator from New York [Mr. ROOT] this morning made an elaborate argument upon that question, with which I am in entire accord. Those who differ with us probably will remain in their opinion until the Supreme Court has decided this question. I do not know of a better case through which to get the opinion of the Supreme Court than this; and I should like very much to have the bill passed and the matter presented to the Supreme Court. If they decide that Congress has no right to attach such a requirement to the issuing of the license, we will know what policy to adopt in the future, while if they decide we have the right, we will know what policy to adopt; but I will venture to say, so long as the President vetoes bills because they do not contain a clause for a money payment and so long as one branch or the other of Congress declines to pass them if they do contain such a provision, we will simply be in a hopeless maze of words, to which there is no end in this body.

A good deal has been said about this bill in some way being something that it does not purport to be; that under the guise of improving navigation the Government is entering into the manufacturing business or the power business, or some such thought as that. It has been said that the dominating motive for the passage of this bill is to generate power, not to improve navigation. Well, there is not any dominating motive about it. The entire motive of the petitioners is to engage in the manufacturing and the selling of electrical power, and the entire motive of the Government is to improve navigation in that river. The Government can not escape its duty under the Constitution. It is obliged to say "yes" or "no" to the issuing of this permit and attach the necessary conditions. It is a straight-out navigation project on the part of the United States Government and a straight-out business proposition on the part of the petitioners for the license. Owing to the situation, naturally there has to be joint action; and in that joint action for the preservation of navigation and its improvement and the development of water power on the river it seems to me to be a perfectly proper and legitimate constitutional action on the part of the Government and a perfectly commendable and praiseworthy undertaking on the part of the petitioners for the license.

It has been said that this money, if it be paid, comes out of the consumers of the electrical power. Of course it does. No company which is required to make any payment gets its money anywhere except from the goods it has to sell. If the Government leases a coal mine to anybody, the consumers have to pay more for the coal than they would if the Government gave it to them free; and it seems to me no legitimate argument against the bill that the company has got to earn the money which it pays into the United States Treasury and which, in turn, the United States Treasury will pay out to improve navigation; but, of course, Senators who are afraid that in some way or other the clause authorizing the payment in the interest of navigation will constitute a precedent for some action of the Government in a different part of the country, under different conditions, attack the bill upon all sorts of grounds and theories. I am inclined to believe that a good many of them are fictitious and not sound objections to the bill.

As I have said, Mr. President, to-morrow I shall ask the Senate to give unanimous consent to the fixing of a particular day and hour to vote upon the bill.

FOREST RESERVES IN WASHINGTON (S. DOC. NO. 1075).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of Agriculture, transmitting, in response to a resolution of the 17th ultimo, certain information with reference to the names of the forest reserves in the State of Washington, their areas, the number of homestead entries allowed in each, the number of ranger stations, etc., which, with the accompanying papers, was referred to the Committee on Agriculture and Forestry and ordered to be printed.

## ASSESSOR'S OFFICE OF THE DISTRICT OF COLUMBIA (S. DOC. NO. 1074).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Treasury, transmitting a letter from the president of the Board of Commissioners of the District of Columbia, submitting a supplemental estimate of appropriation for the service of the fiscal year ending June 30, 1914, assessor's office, \$15,000, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

## THE CAPITOL GROUNDS (H. DOC. NO. 1392).

The PRESIDENT pro tempore laid before the Senate the report of the Commission for Enlarging the Capitol Grounds, which was referred to the Committee on Public Buildings and Grounds.

## FINDINGS OF THE COURT OF CLAIMS.

The PRESIDENT pro tempore laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact and conclusions filed by the court in the following causes:

Anna Coakley, widow of Timothy Coakley, and Thomas W. Woodward v. United States (Mare Island Navy Yard) (S. Doc. No. 1085);

William W. Pidgeon and Julius B. Price, administrator of George W. Conway, deceased, v. United States (League Island Navy Yard) (S. Doc. No. 1086);

John Coward, subnumber 94; Thomas R. Harbridge, subnumber 95; William H. Kiner, jr., subnumber 96; and Robert Mulready, subnumber 97, v. United States (League Island Navy Yard) (S. Doc. No. 1084);

William F. O'Hearn and John W. Simonson v. United States (Boston Navy Yard) (S. Doc. No. 1083);

George E. McIntosh v. United States (Portsmouth (N. H.) Navy Yard) (S. Doc. No. 1082);

William S. Bande, and sundry subnumbered cases, v. United States (League Island Navy Yard) (S. Doc. No. 1081);

Ellen Bonner, widow of George Bonner, deceased, and sundry subnumbered cases, v. United States (Brooklyn Navy Yard) (S. Doc. No. 1080);

Richard Barrington, and sundry subnumbered cases, v. United States (Brooklyn Navy Yard) (S. Doc. No. 1079);

Lawrence M. Herbert and George C. Stanley v. United States (Washington Navy Yard) (S. Doc. No. 1078);

John E. Amazeen, and sundry subnumbered cases, v. United States (Portsmouth (N. H.) Navy Yard) (S. Doc. No. 1077); and

Henry B. Colson, and sundry subnumbered cases, v. United States (Portsmouth Navy Yard, Portsmouth, N. H.) (S. Doc. No. 1076).

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims and ordered to be printed.

## MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the bill (S. 4043) divesting intoxicating liquors of their interstate character in certain cases.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 26680) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes; further insists upon its disagreement to the amendments upon which the first committee of conference have been unable to agree; agrees to the further conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. JOHNSON of South Carolina, Mr. BURLISON, and Mr. GILLET managers at the conference on the part of the House.

The message further informed the Senate that Mr. TAYLOR of Colorado had been appointed a member of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 23293) for the protection of the water supply of the city of Colorado Springs and the town of Manitou, Colo., vice Mr. FERRIS.

The message also transmitted to the Senate resolutions of the House on the life and public services of Hon. WILLIAM P. FRYE, late a Senator from the State of Maine.

The message further transmitted to the Senate resolutions of the House on the life and public services of Hon. GEORGE HERBERT UTTER, late a Representative from the State of Rhode Island.

The message also transmitted to the Senate resolutions of the House on the life and public services of Hon. ALBERT HAMILTON HUBBARD, late a Representative from the State of Iowa.

## REPORT OF COMMITTEE ON INDIAN AFFAIRS.

Mr. OWEN, from the Committee on Indian Affairs, reported an amendment authorizing the Secretary of the Treasury to extend each of the deferred payments on the town lots of the north addition to the city of Lawton, Okla., one year from the date on which they become due under the existing law, etc., intended to be proposed to the Indian appropriation bill, submitted a report (No. 1208) thereon, and asked that it lie on the table and be printed, which was agreed to.

## AMENDMENT TO THE AGRICULTURE APPROPRIATION BILL.

Mr. GUGGENHEIM submitted an amendment proposing to appropriate \$15,000 to enable the Secretary of Agriculture to investigate the cultivation and acclimating of potatoes, and the development of improved and disease-resistant types, and for the investigation of leaf roll, dry rot, and other new diseases, etc., intended to be proposed by him to the Agriculture appropriation bill, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

## MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE FOSTER.

Mr. PAGE. Mr. President, I wish to give notice that on March 1, 1913, I will ask the Senate to consider resolutions commemorative of the life and public character of DAVID J. FOSTER, late a Representative in Congress from the State of Vermont.

The PRESIDENT pro tempore. The notice will be entered.

Mr. BRANDEGEE. Mr. President, if there is no other Senator who desires to make remarks on the pending bill to-night, I move that the Senate take a recess until 12 o'clock noon to-morrow.

The motion was agreed to; and (at 5 o'clock and 37 minutes p. m., Thursday, February 13) the Senate took a recess until Friday, February 14, 1913, at 12 o'clock meridian.

## HOUSE OF REPRESENTATIVES.

THURSDAY, February 13, 1913.

The House met at 11 o'clock a. m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Father in heaven, we thank Thee that the time has come in the onward march of progress when we do not in the last analysis measure a man's life by his political or religious creed, by the position he may chance to hold, by his earthly possessions, nor by the circle in which he moves, but by what he has contributed to the common weal, the motives which prompted action, the character he has woven into the tissues of his soul. Touch us by the majesty of Thy wisdom, power, and goodness that we may measure up to the ideals as we know them in Christ Jesus our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

## LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

Mr. JOHNSON of South Carolina. Mr. Speaker, I call up the conference report on the bill (H. R. 26680) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes, and I ask that the statement be read in lieu of the report.

The SPEAKER. The gentleman from South Carolina [Mr. JOHNSON] calls up the conference report on the legislative, executive, and judicial appropriation bill (H. R. 26680), and asks unanimous consent that the statement be read in lieu of the report. Is there objection?

There was no objection.

The conference report is as follows:

## CONFERENCE REPORT (NO. 1498).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 26680) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 31, 32, 33, 34, 35, 36, 40, 48, 51, 52, 70, 99, 100, 104, 105, 117, 118, 119, 125, 126, 127, 128, 132, 133, 141, 157, 158, 159, 175, 197, 198, 199, 202, 206, 207, 218, 219, 220, 221, 236, 241, and 242.